163 U.S. 269

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 259.

JAMES C. EDWARDS, PLAINTIFF IN ERROR,

vs.

BATES COUNTY, IMPLEADED IN BEHALF OF MOUNT PLEASANT TOWNSHIP.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED AUGUST 7, 1893.

(15,370.)

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a UNITED STATES OF AMERICA, *set:*

To Bates County, impleaded in behalf of Mount Pleasant Township, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second day of August next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western division of the western district of Missouri, wherein James C. Edwards is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John F. Philips, judge of the circuit court of the United States for the western division of the western district of Missouri, this third day of July, in the year of our Lord one thousand eight hundred and ninety-three.

JNO. F. PHILIPS, *Judge.*

b [Endorsed:] United States circuit court, western district of Missouri, western division. James C. Edwards *vs.* Bates County. Citation. Filed July 3, 1893. Adelaide Utter, clerk.

UNITED STATES OF AMERICA, } *ss:*
Western District of Missouri, }

I hereby acknowledge due service of the within citation this third day of July, A. D. 1893.

EDWARD P. GATES,
Attorney for Defendant in Error.

c UNITED STATES OF AMERICA, *set:*

The President of the United States to the judge of the circuit court of the United States for the western division of the western district of Missouri, Greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between James C. Edwards, plaintiff, and Bates County, impleaded in behalf of Mount Pleasant Township, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the

second day of August next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court.

Seal of the United States Circuit Court for the Western District of Missouri, Western Division.

Issued at office, in Kansas City, this third day of July, A. D. 1893.

ADELAIDE UTTER, *Clerk*,
By —— ——, *D. C.*

Allowed:
JNO. F. PHILIPS, *Judge.*

d [Endorsed:] United States circuit court, western district of Missouri, western division. James C. Edwards *vs.* Bates County. Writ of error. Filed July 3, 1893. Adelaide Utter, clerk.

WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI, *set:*

I do hereby return due and perfect obedience to the within writ, and do herewith, under the seal of said circuit court, distinctly and openly, send the record and proceedings aforesaid, with all things concerning the same.

Witness my hand as clerk and the seal of said court.

Seal of the United States Circuit Court for the Western District of Missouri, Western Division.

Issued at office, in Kansas City, this 11th day of July, A. D. 1893.

ADELAIDE UTTER, *Clerk*,
By —— ——, *Deputy Clerk.*

1 (1758.)

UNITED STATES OF AMERICA, *set:*

Be it remembered that heretofore, to wit, on the 5th day of October, A. D. 1891, there was filed in the office of the clerk of the circuit court of the United States for the western division of the western district of Missouri a petition, wherein James C. Edwards is plaintiff and Bates County, impleaded in behalf of Mt. Pleasant Township, is defendant.

Said petition is in words and figures as follows:

UNITED STATES OF AMERICA,
Western District of Missouri, Western Division.

In the Circuit Court.

JAMES C. EDWARDS, Plaintiff,
vs.
BATES COUNTY, Impleaded in Behalf of MT. PLEASANT TOWNSHIP, Defendant.

The plaintiff, a citizen of the State of New York, complains of the defendant, a county of the State of Missouri, and of Mt. Pleasant Township, a municipal township for election purposes, in said county, and says that heretofore, to wit, on the 5th day of April, 1870, twenty-five persons, tax-payers and residents of said township, presented to the county court of said county a petition setting forth their desire as a township to subscribe the sum of ninety thousand dollars to the capital stock of the Lexington, Chillicothe & Gulf Railroad Company and to issue bonds in payment of such subscription; that thereupon said county court ordered an election to be held in said township on the 3rd day of May, 1870, to
2 determine whether or not such subscription should be made and such bonds should be issued; that said election was held as ordered and two-thirds of the qualified voters of said township who voted thereat voted in favor of such subscription and of issuing such bonds; that said company was at all the dates aforesaid a corporation existing under and by virtue of the laws of the State of Missouri; that on the 14th day of June, 1870, said subscription was made by said court to the capital stock of said company, and the same was on the 17th day of June, 1870, accepted by said company; that on the 18th day of July, 1870, a corporation styled the Pleasant Hill division of the Lexington, Chillicothe & Gulf Railroad Company was incorporated under and by virtue of the laws of the State of Missouri; that on the 4th day of October, 1870, the said two corporations consolidated into one corporation under the name of the Lexington, Lake and Gulf Railroad Company; that the terms and conditions of said consolidation were such that the said Lexington, Lake and Gulf Railroad Company became entitled to have, demand, sue for, recover, and receive the said subscription and the bonds to be issued in payment thereof; that on the 18th day of January, 1871, said county court caused said subscription to be made and transferred to the said Lexington, Lake and Gulf Railroad Company, and caused said bonds to the amount of ninety thousand dollars to be executed and issued in payment thereof; that by each of said bonds said county acknowledged itself indebted and firmly bound to the said Lexington, Lake and Gulf Railroad Company in the sum of one thousand dollars, which sum said county, for and in behalf of Mt. Pleasant township, promised to pay to said railroad company or bearer, at the Bank of America, in the city and State of New York, on the 18th day of January, 1886, together with interest at the rate of ten per cent.

per annum, said interest to be payable annually on the
3 presentation and delivery at said bank of the coupons to said bonds attached; that the said bonds were all signed by one B. H. Thornton, who was then the presiding justice of said county court, and were attested by one W. J. Smith, who was then the clerk of said court, and were sealed with the seal of said court; that attached to each of said bonds were coupons for interest to accrue as aforesaid, by each of which coupons the said county acknowledged to owe and promised to pay to bearer the sum of one hundred dollars on the 18th day of January of the year named in said coupons at the said bank, and that each of said coupons was signed by said Smith, clerk as aforesaid.

Plaintiff states that he is the owner and bearer of sundry of said bonds and coupons, to wit, bonds numbered 33 and 35 and coupons attached to said bonds for interest, which matured on the 18th day of January in each of the following years, to wit, 1886, 1885, 1884, 1883, 1882, 1881, 1880, 1879, 1878, 1877, 1876, 1875, 1874, and 1873; that within ten years before the beginning of this action the said county, by an order of her said county court, duly entered of record and signed by the judges of her said court, acknowledged all of said bonds and coupons as debts of said county, acting for and in behalf of said township; that all said bonds and coupons are unpaid. Wherefore plaintiff prays judgment for the said bonds, with interest from maturity at the rate of ten per cent. per annum, and for all the said coupons, with interest from maturity of each at the rate of six per cent. per annum, and for his costs.

For further cause of action plaintiff states that on and prior to the 10th day of July, 1885, the defendant, the said County of Bates, was indebted (for and on account of the municipal town-
4 ship of Mount Pleasant aforesaid, as the same was organized and limited on the 18th day of January, 1871) in sundry bonds and coupons issued to pay a subscription to the capital stock of the said Lexington, Lake & Gulf Railroad Company; that on the said 10th day of July, upon the petition of fifty resident tax-payers of said township, the said county court submitted to the qualified vote-s of said township a proposition to compromise and fund all of the said indebtedness by issuing new funding bonds in place and stead of and upon the surrender and cancellation of said bonds and coupons, and to enable the said voters to vote upon the said proposition ordered a special election to be held in said township on the 25th day of August, 1885; that notice of said election was given by advertisement published in a weekly newspaper published in said township for four successive weeks before the said 25th of August, the last insertion of said notice being ten days before said date; that on said day said election was held and a majority of the qualified voters who voted thereat voted in favor of the said proposition; that thereafter, to wit, on the 8th day of September, 1885, the county court of said county entered an order whereby it authorized the execution and delivery of new funding bonds on the surrender and cancellation of said railroad bonds; that in pursuance of said order and acting under and by authority of and in full compliance with

article I of chapter 83 of the Revised Statutes of Missouri of 1879 the said county court, on the first day of October, 1885, upon the surrender and cancellation of certain of said railroad bonds and coupons, caused to be executed, issued, and delivered in their place and stead certain bonds, called Bates County funding bonds, and numbered respectively 20, 27, 46, 47, 48, 49, and 50, by each of which bonds said county, for and in behalf of the said municipal township, as organized and limited as aforesaid, acknowledged itself indebted and firmly bound unto bearer in the sum of one hundred dollars for value received, which sum the said county, in behalf of the said township, promised to pay to the bearer thereof, at the State Savings Association of St. Louis, on the first day of October, A. D. 1905, together with interest thereon from the date thereof at the rate of six per cent. per annum, said interest to be payable on the first day of April of each year, but the said county reserved the right to redeem said bonds any time after the first day of October, 1890, agreeing, however, that before said bonds could be redeemed notice should be given by advertisement published for 30 days in some daily newspaper published in the city of St. Louis, specifying the said bonds and specifying the time, and, in case the said State Savings Association should cease to exist, the place in said city at which the same should be presented for redemption, such notice to be given for 30 days before the first day of April, July, October, or January, and agreeing also that if said bonds should be specified in any such notice and should be presented for payment at the place named and at the time fixed in said notice they should be redeemed by paying the principal thereof, together with interest to the day of presentment.

Plaintiff states that said bonds were all signed by one John A. Lefker, who was then the presiding justice of said county court, and were attested by one R. J. Starke, who was then clerk of said court, and were sealed with the seal of said court.

Plaintiff states that for thirty days prior to the first day of July, 1891, the said county caused an advertisement to be published in the Star Sayings, a daily newspaper published in said city, specifying said bonds No. 20, No. 27, No. 46, No. 47, No. 48, No. 49, and No. 50 for redemption, and specifying also the first day of July, 1891, as the time for redemption and (the State Savings Association having ceased to exist) the State Bank of St. Louis, in said city, as the place at which said bonds should be presented for payment; that plaintiff is the owner and bearer of all said bonds and presented the same at the said last-named bank on the first day of July, 1891, and demanded payment thereof, but payment was refused; that no interest has been paid on said bonds since the first day of April, 1891; wherefore plaintiff prays judgment for the sum of seven hundred dollars, with interest since the first day of April, 1891, and for his costs.

T. K. SKINKER,
Attorney for Plaintiff.

And thereupon, to wit, on the 15th day of October, A. D. 1891, a writ of summons was issued, which writ, with the return of the marshal thereon, was returned and filed on the 2nd day of February, 1892.

Said writ, with the return, *are* in words and figures as follows:

UNITED STATES OF AMERICA, }
Western Division of the Western District of Missouri, } *sct:*

The President of the United States of America to the marshal of the United States for the western district of Missouri, Greeting:

You are hereby commanded to summon Bates County, in the State of Missouri and the western division of the western district thereof, to be and appear before the honorable circuit court of the United States in and for the western division of the western
7 district of Missouri on the first day of the next term thereof, to be begun and holden at the city of Kansas, in said district, on the first Monday, the 7th day, of March next, then and there to answer the complaint of James C. Edwards, a citizen of the State of New York, as set forth in the petition filed in the office of the clerk of said court on the 5th day of October, A. D. one thousand eight hundred and ninety-one.

Hereof fail not, and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 15th day of Octo-
[SEAL.] ber, A. D. eighteen hundred and ninety-one. Issued at office, in the city of Kansas, in said district, under the seal of said circuit court, the day and year last aforesaid.

WARREN WATSON, *Clerk.*

WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI, *sct:*

I do hereby certify that I executed the within writ by delivering a true copy thereof, together with a true copy of the petition in the cause, to Jas. Drysdale, clerk of the county court of Bates county, Mo., in his office, in Butler, the county-seat of said county, this 1st day of Feb., A. D. 1892, in and for the western division of the western district of Missouri.

JNO. P. TRACEY,
United States Marshal,
By JNO. TRACEY, *Deputy.*

And afterwards, to wit, on the 7th day of March, A. D. 1892, the following entry appears of record:

JAMES C. EDWARDS }
against } 1758.
8 BATES COUNTY. }

Defendant files plea to the jurisdiction.

Said plea is in words and figures as follows:

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

JAMES C. EDWARDS, Plaintiff,
vs.
BATES COUNTY, Defendant. } No. 1758.

Now comes the defendant and files *his* plea to the jurisdiction of the court in this cause, and says—

That on November 13th, 1889, one Norman De V. Howard, claiming to be a citizen of the State of Florida, by his attorney, T. K. Shinker, who is the attorney also of the plaintiff herein, filed his petition in this court against the defendant, in which he claimed to be the owner of the said bonds Nos. 33 and 35 and of the coupons alleged to have matured on the 18th day of January, of the years 1880, 1882, 1883, 1884, 1885, and 1886, respectively, sued on herein; that a demurrer was filed to the said petition of the said Norman De V. Howard on March 3rd, 1890, for the reason that this court had no jurisdiction of the alleged cause of action set forth in said petition, because the amount in controversy in said suit, exclusive of interest, did not exceed the sum of $2,000.00; that on September 1st, 1890, the said demurrer was sustained by this court for the cause stated therein; and afterwards, to wit, on the 2nd day of March, 1891, the said Norman De V. Howard, by his said attorney, T. K. Skinker, dismissed the said suit. The defendant further alleges that on the — day of ——, 1891, after the demurrer was sustained to the suit of the said Norman De V. Howard as aforesaid and
9 before the said suit was dismissed, the plaintiff in this suit, James C. Edwards, filed a suit in this court against the defendant upon the same bonds and coupons included in the said suit of the said Norman De V. Howard, together with the other coupons sued on herein and alleged to have matured on the 18th day of January, of the years 1873, 1874, 1875, 1876, 1877, 1878, and 1879, respectively; that on the 5th day of October, 1891, this court sustained the demurrer filed by the defendant to a part of the petition of the said James C. Edwards in said suit, wherein it was determined that the plaintiff, James C. Edwards, had no cause of action against the defendant upon the coupons alleged to be due upon the 18th day of January, of the years 1873, 1874, 1875, 1876, 1877, 1878, 1879, and 1880, because it appeared upon the face of the plaintiff's petition that the said coupons were barred by the statute of limitations; that after the said demurrer was sustained the amount claimed to be due by the plaintiff upon the petition as it then stood did not exceed the sum or value of $2,000.00, exclusive of interest and costs.

The defendant further alleges that afterwards, to wit, on the 15th day of October, 1891, the said James C. Edwards, through his attorney, T. K. Skinker, filed in this court the present suit against the defendant upon the same bonds and coupons included in the said suit above mentioned, together with the funding bonds in the plaintiff's petition described. The defendant says that the plaintiff's petition does not state facts sufficient to constitute a cause of action

against the defendant upon the coupons mentioned therein, which are alleged to have matured on the 18th day of January, of the years 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, for the reason that it appears upon the — of the said petition that any right of action upon the said coupons is barred by the statute of limitations of the State of Missouri. As to the remaining coupons sued on herein, the defendant alleges that the plaintiff has another and former action pending thereon against the defendant, as above set forth, which suit is numbered 1666 and has never been dismissed. The defendant alleges that the funding bonds sued on herein and described in the plaintiff's petition are not yet due and payable and will not be due until the first day of October, 1905, as the terms of said bonds will show, and were included in this suit, as were the coupons barred by the statute as aforesaid, not for the purpose of recovering any judgment thereon, but for the purpose and in the attempt to bring within the jurisdiction of the court a controversy which does not exceed, exclusive of interest and costs, the sum or value of $2,000.00.

The defendant alleges that the said funding bonds provide on their face that "the said county of Bates, for and on behalf of said municipal township of Mount Pleasant, hereby reserves the right, at its option, to redeem this bond at any time after five years from the first day of October, 1885, in accordance with the conditions printed on the back of this bond;" that the said condition printed on the back of said bonds is as follows: "These bonds shall be redeemable at any time after the first day of October, 1890, at the option of this court, and in case any bond shall be redeemed before maturity all unearned interest not matured at the date of redemption shall be delivered up by the holder, together with such bond. All bonds of the denomination of one hundred dollars shall be called for redemption before any of the denomination of one thousand dollars are called. All bonds of each denomination shall be numbered consecutively from one upwards and shall be called for redemption in numerical order, beginning with number one. Before any bond can be redeemed notice shall be given by advertisement published for thirty days in some daily newspaper published in the city of St. Louis specifying the bond or bonds to be redeemed and the time, and, in case the said State Savings Association shall cease to exist, the place in said city at which the same shall be presented for redemption. Such notice shall be given for thirty days before the first day of April, July, October, or January, and any bond specified in said notice which shall be presented at the place named and at the time fixed in the said notice or within thirty days thereafter shall be redeemed by paying the principal thereof, together with interest to the day of presentment, and if any bond — called but not redeemed when presented or within thirty days thereafter the notice of redemption shall be void. If any bond be not presented as required in such notice or within thirty days after the date therein fixed interest thereon shall cease from said date, but said bond, with interest accrued to said date, shall be payable upon presentment at the office of the treasurer of

Bates county at any time thereafter." The defendant alleges that none of the said funding bonds sued on herein were ever presented at any time for payment at the State bank, nor were any of said bonds ever presented for payment at the office of the treasurer of Bates county; and the defendant alleges that the plaintiff holds the same and failed to present them for payment for the sole purpose of including them in this suit in attempt to give this court jurisdiction of the other bonds as aforesaid, and if said bonds had ever been presented either to the State Bank of St. Louis or at the office of the treasurer of Bates county they would have been paid.

Wherefore the defendant alleges that the said Norman De V. Howard and the plaintiff, through their said attorney, T. K.
12 Skinker, by combining with the bonds and coupons owned by the said Norman De V. Howard coupons which are barred by the statute of limitations of the State of Missouri and funding bonds not yet matured and upon which the plaintiff and the said Howard and their said attorney have no hope and expectation of obtaining any judgment against the defendant, are attempting to bring within the jurisdiction of this court a matter of controversy which does not, exclusive of interest and costs, exceed the sum or value of $2,000.00 and of which they well know this court has no jurisdiction, and the defendant therefore prays that this suit be dismissed for want of jurisdiction.

GATES & WALLACE,
Attorneys for Defendant.

And afterwards, to wit, on the 15th day of March, A. D. 1892, the following entry appears of record:

JAMES C. EDWARDS
against
BATES COUNTY. } 1758.

Ordered by counsel that this cause be continued.

And afterwards, to wit, on the 29th day of November, A. D. 1892, plaintiff files reply to the plea to the jurisdiction.

Said reply is in words and figures as follows:

JAMES C. EDWARDS, Plaintiff,
vs.
BATES COUNTY, Defendant. } No. 1758.

The plaintiff comes and for reply to defendant's plea to the jurisdiction says—

That the first action instituted by this plaintiff and
13 referred to in said plea, being case No. 1666, did not include bonds Nos. 33 and 35, herein sued on, but only the coupons of said bonds.

That in said first action the court refused to sustain a plea to the jurisdiction, though it did sustain a demurrer to the petition so far as the same was founded on certain of said coupons; that it is not

true that after said demurrer was sustained the amount claimed to be due by the plaintiff did not exceed the sum or value of $2,000.00, exclusive of interest and costs.

That it is not true the seven funding bonds and the coupons due in the years 1873, 1874, 1875, 1876, 1877, 1878, 1879, and 1880 were included in this action for the purpose and in the attempt to bring within the jurisdiction of the court a controversy which does not exceed, exclusive of interest and costs, the sum or value of $2,000.00, without any purpose, hope, or expectation of recovering a judgment thereon; but, on the contrary, the plaintiff hopes and fully expects and his resolute purpose is, if possible, to recover judgment on the said bonds and coupons, as well as the other bonds and coupons declared on in the petition, and to this end alone did he institute this action.

Plaintiff further says that said funding bonds, though not due by their terms, have been made due by act of the defendant, lawfully taken in that behalf, and the said coupons which became due in the years 1873 to 1880, inclusive, have within ten years before the institution of this action been acknowledged by the defendant to be its obligations incurred for the benefit and on behalf of said township, and plaintiff was of lawful right entitled, if he saw fit, to unite them in the same action with his other causes of action against defendant.

14 Plaintiff further says that it is not true that said Howard is or at the institution of this action was the owner of any of the bonds or coupons herein sued on.

T. K. SKINKER,
For Plaintiff.

And afterwards, to wit, on the 29th day of November, A. D. 1892, the following entry was made of record:

JAMES C. EDWARDS
against
BATES COUNTY. } 1758.

This day come the parties, by their attorneys, the plaintiff by Thomas K. Skinker, Esq., and the defendant by Messrs. Gates & Wallace; thereupon plaintiff files reply and this cause is submitted upon stipulation filed herein on this day, with leave to parties to file briefs.

Said stipulation is in words and figures following:

JAMES C. EDWARDS
vs.
BATES COUNTY. }

Now come the parties, by their attorneys, and submit this case for trial upon the plea to the jurisdiction and the reply to the said plea, and the following evidence offered by the parties:

1. The court files and record entries in the case of Norman De V. Howard *vs.* Bates County, No. —, in this court.

2. The court files and record entries in the case of James C. Edwards *vs.* Bates County, No. 1666, in this court.

15 3. Agreed statement as to certain facts, hereto annexed.

4. Affidavit of C. Herni, annexed.

5. Certified copies of orders of the county court of Bates county, entered July 10th, 1885, and September 8, 1885.

The right is reserved to either party to object to any of the foregoing evidence for relevancy or competency, but not for want of form.

T. K. SKINKER,
For Plaintiff.
GATES & WALLACE,
For Defendant.

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

JAMES C. EDWARDS, Plaintiff,
vs.
BATES COUNTY, Defendant. } No. 1758.

It is hereby a-mitted and agreed by the parties hereto that the following facts are true, viz:

That the defendant, for thirty days prior to the 1st day of July, 1891, caused an advertisement to be published in a daily newspaper in the city of St. Louis, specifying, among others, *that* the funding bonds sued on herein, Nos. 20, 27, 46, 47, 48, 49, and 50, for redemption, and specifying also the 1st day of July, 1891, as the time for redemption, and (the State Savings Association having ceased to exist) the State Bank of St. Louis, in said city, as the place at which said bonds should be presented for payment, a printed copy of which advertisement is hereto annexed; that none of said funding bonds Nos. 20, 27, 46, 47, 48, 49, and 50

16 were ever presented at any time for payment at said State Bank of St. Louis, nor were any of said bonds ever presented at any time for payment at the office of the treasurer of said Bates county; that on said 1st day of July, 1891, and for more than thirty days thereafter, said Bates county had on deposit with said State Bank of St. Louis sufficient funds belonging to said Mount Pleasant township to pay any and all of said bonds, which funds had been deposited with said bank for that special purpose; that said Bates county had in the hands of its county treasurer money sufficient belonging to said township to pay said bonds at any and all times after said 30 days from said 1st day of July, 1891, if they had been presented for payment by the holder thereof.

T. K. SKINKER,
Att'y for Pl'ff.
GATES & WALLACE,
Att'y for Def't.

To the holder or holders of Mt. Pleasant Township bonds, each of $100.00, bearing interest at 6 % per annum, issued by Bates county for and in behalf of said township, dated on the 1st day of October, 1885, payable on the 1st day of October, 1905, at the State Savings Association, in St. Louis, Mo., and redeemable at the option of Bates county at any time after five years from said 1st day of October, 1885:

You are hereby notified that by order of the county court of Bates county, made on the 18th day of May, 1891, the above-described bonds were declared due and payable at the State Bank of St. Louis, in St. Louis, Missouri, on the 1st day of July, 1891, as follows: Bonds numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 59 will be paid, both principal and accrued interest, to said date out of moneys
17 raised by taxation in said township for this purpose, and all bonds above described and numbered that are not so presented for payment in accordance with this call shall cease to draw interest from said date.

C. HIRNI,
Treasurer Bates County, Missouri.

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

JAMES C. EDWARDS, Plaintiff,
vs.
BATES COUNTY, Defendant. } No. 1758.

COUNTY OF JACKSON,
State of Missouri, } *ss:*

C. Hirni, being duly sworn, makes oath and says that he was April 1st, 1891, and has been ever since treasurer of Bates county, Missouri; that thirty days prior to July 1st, 1891, he caused a notice to be published in a daily newspaper of St. Louis, Mo., specifying that the funding bonds of said Bates county Nos. 20, 27, 46, 47, 48, 49, and 50, among others, issued on behalf of Mt. Pleasant township, in said county, for redemption, and the State Bank of St. Louis, in said city, as the place, and July 1st, 1891, as the time when said bonds should be presented for payment; that prior to said 1st day of July, 1891, he, as such treasurer of Bates county, sent to said State bank, at St. Louis, sufficient funds belonging to said Mt. Pleasant township to pay any and all of said bonds if they had been presented to such bank for payment, which funds remain- on deposit with said bank for that purpose for more than thirty days after July 1st, 1891; that this affiant has had in his possession as
18 such county treasurer money belonging to said Mt. Pleasant township sufficient to pay said bonds at any and all times after said thirty days from said 1st day of July, 1891, if they had been presented at the office of the treasurer of said Bates county;

that none of said bonds above mentioned have been presented at his said office for payment, and if any or all of them had been presented for payment at any time thirty days from after said 1st day of July, 1891, at the office of the treasurer of said Bates county they would have been paid.

C. HIRNI.

Subscribed and sworn to before me this 29th day of November, 1892.

My commission expires November 9th, 1895.

[SEAL.] GEO. HILLER, JR.,
Notary Public, Jackson Co.

And afterwards, to wit, on the 24th of April, A. D. 1893, following entry was made of record:

JAMES C. EDWARDS
against } 1758.
BATES COUNTY.

This case having heretofore been submitted on the plea to the jurisdiction, the reply thereto, and certain evidence, as shown by a stipulation filed herein, the court, being now fully advised in the premises, doth order that the said plea be, and the same is hereby, sustained; and it is ordered by the court that this cause be dismissed for want of jurisdiction.

And afterwards, to wit, on the 27th day of April, A. D. 1893, the following entry was made of record:

JAMES C. EDWARDS
against } 1758.
19 BATES COUNTY.

This day comes plaintiff, by his attorneys, and files motion for a new trial.

And afterwards, to wit, on the 12th day of June, A. D. 1893, the following order was entered of record:

JAMES C. EDWARDS
against } 1758.
BATES COUNTY.

Ordered that the motion for a new trial herein be denied.

And afterwards, to wit, on the 3rd day of July, A. D. 1893, the following entry appears of record:

JAMES C. EDWARDS
against } 1758.
BATES COUNTY.

This day comes defendant and presents a bill of exceptions herein, and the same is duly allowed and signed by the court and ordered

to be made a part of the record; thereupon the said defendant presents its assignment of errors and a bond for a writ of error to the Supreme Court of the United States; whereupon said assignment of errors is filed, said bond approved by the court and ordered filed and made a part of the record herein, a writ of error is allowed, and a citation signed by the court.

20 Said bill of exceptions is in words and figures as follows:

JAMES C. EDWARDS, Plaintiff,
vs.
BATES COUNTY, Impleaded in Behalf of MT. PLEASANT TOWNSHIP, Defendant. } No. 1758.

Be it remembered that on the trial of this case the following proceedings were had, to wit:

The plaintiff, to sustain the issues on his part, offered in evidence two orders made by the county court of Bates county, Missouri, one on the 10th day of July, 1885, the other on the 8th day of September, 1885, which orders are in words and figures following:

STATE OF MISSOURI, } *ss:*
County of Bates, }

May adjourned term, 1885.

In the county court of said county, on the 10th day of July, 1885, the following, among other, proceedings were had, viz:

In the county court of said Bates county, at its regular May adjourned term, begun and held in the town of Butler, in said county, on the 10th day of July, 1885.

Whereas on this day (the 10th day of July), during said term of court, came A. L. McBride and others, resident tax-payers of the municipal township of Mt. Pleasant, in said county of Bates, and present to the court a petition signed by more than fifty resident tax-payers of said township; which said petition is in words and figures as follows, to wit:

21 To the honorable the county court of Bates county, Missouri:

The undersigned, fifty and more resident tax-payers of Mt. Pleasant township, in the county of Bates, in the State of Missouri, represent to your honorable body that heretofore, to wit, in the year 1871, the county court of said county caused to be issued and negotiated certain bonds in the name of Bates county, for and on behalf of the municipal township of Mt. Pleasant, in said county, which said bonds were all voted on the 18th day of January, 1871, and payable to the Lexington, Lake and Gulf Railroad Company; they say that said bonds bear interest at the rate of ten per cent. per annum, payable annually at the Bank of America, in the city and State of New York, on the 18th day of January of each year from date thereof;

that said bonds were issued and negotiated in the total sum of ninety thousand dollars and for the purpose of building and constructing a railroad into and through the township of Mt. Pleasant aforesaid, beginning at the city of Lexington and extending in a southwestern direction, by the way of Pleasant Hill, in Cass county, towards Fort Scott, in Kansas, the line of said road being more particularly described in the charter of said company, of record in the office of the secretary of state of Missouri, at Jefferson City.

They say that ninety bonds were issued as aforesaid, each for one thousand dollars, one-third of which, to wit, bonds numbered from one to thirty, both inclusive, were made payable ten years after the date thereof, one-third thereof, to wit, bonds numbered thirty-one to sixty, both inclusive, were made payable fifteen years after the date thereof, and the remaining third, to wit, bonds numbered from sixty-one to ninety, both inclusive, were made payable twenty years from the date thereof.

Your petitioners are advised that various suits have been
22 instituted on the matured bonds and coupons of said issue, and that several judgments have been rendered thereon against the county, with order that the same be levied and collected by special taxes upon the property of Mt. Pleasant township.

Your petitioners are also advised that the total amount of indebtedness now due on said bonds and coupons is about two hundred and fifty thousand dollars, of which about one hundred and thirty thousand dollars is in suit or reduced to judgment and the remainder in the shape of bonds and coupons.

They are further advised that the holders of eighty of said bonds so issued and all the interest thereon, constituting eight-ninths of the whole debt of said township as aforesaid, have filed with the county court of Bates county their written agreement to accept and receive in full compromise settlement and satisfaction of the claims so held by them new funding bonds of the county of Bates, to be issued in conformity with the statutes of Missouri on that subject, at the rate of seventy cents to the dollar in new bonds for each dollar of indebtedness now held by them and which is in judgment or in suit and sixty-five cents to the dollar in new bonds for each dollar of such indebtedness not now in suit nor reduced to judgment.

We therefore pray your honorable body to submit a proposition to the qualified voters of Mt. Pleasant township as it existed at the date of the issue of said bonds to be voted on at a special election to be held at an early day to determine whether they will accept said proposition, and if the same be accepted that new funding bonds, payable in twenty years and redeemable at the option of the makers of the said bonds at the end of five years from the date of said bonds
or at any time thereafter before the expiration of the said
23 twenty years, bearing interest at the rate of six per cent. per annum, the interest payable annually, and when the principal of said bonds or either of them is paid, then the outstanding coupons at that date for unearned interest shall be surrendered by the holder of said bonds and coupons and cancelled by the said county court, both the principal and interest payable at some solvent bank in the

city of St. Louis, Missouri, be issued and delivered to the holders of said indebtedness at a rate not exceeding these herein named, and that said old indebtedness be paid off and cancelled by said Bates county court.

And they further pray that all of the old indebtedness not compromised and cancelled within six months from the date of the issue of said new bonds herein provided for shall remain uncompromised and unsettled, and that after said period no new bonds shall be issued or delivered by the county court in discharge or payment of said old indebtedness; and, as in duty bound, we will ever pray.

Butler, Mo., June 30, 1885.

And whereas it appears to the court that the county court of said county in the year 1871 caused to be issued and negotiated for and on behalf of the municipal township of Mt. Pleasant, in said county, as it was then organized, defined, and bounded, ninety bonds of said county, each for one thousand dollars, all dated January 18th, 1871, bearing interest at ten per cent. per annum, the interest payable annually at the Bank of America, in the city and State of New York, one-third of said bonds, to wit, those number- from one to thirty, both inclusive, being payable at said bank ten years after the date thereof, and one-third thereof, to wit, those bonds numbered from thirty-one to sixty, both inclusive, being payable at said bank fifteen
24 years after date thereof, and the remainder of said bonds, to wit, those numbered from sixty-one to ninety, both inclusive, being payable at said bank twenty years after date thereof, all of said bonds being made payable to the Lexington, Lake & Gulf Railroad Company, which company was then duly organized under the laws of the State of Missouri, proposing to build a railroad into and through said township of Mount Pleasant; and whereas it appears to the court that a small portion of the coupons originally attached to said bonds and maturing in the years 1872 and 1873 have been paid off and cancelled, leaving a total amount now due and owing by said township of about two hundred and fifty thousand dollars, of which an amount equal to about one hundred and thirty thousand dollars is now in suit or reduced to judgment in behalf of creditors holding the same and the remainder thereof is in the shape or form of unsued bonds and coupons; and whereas it appears to the court that the owners and holders of eighty of said bonds, together with all interest accrued thereon, have filed with the county court aforesaid their written agreement to compromise and settle said bonds and interest by accepting new funding bonds, to be issued according to the laws of Missouri by said county for said township, at the rate of seventy-five cents in new funding bonds for each dollar of said old indebtedness which has been sued upon or reduced to judgment and sixty-five cents to the dollar for each dollar of said old indebtedness not sued — or reduced to judgment;

And whereas now, upon the presentation of said petition, it becomes and is the duty of the court to submit to the qualified voters of said township of Mt. Pleasant, as it was organized and

bounded when said bonds were issued, a proposition to compromise and fund the indebtedness created by the issue of said bonds and so remaining unpaid: Now, therefore, it is hereby ordered
25 that a proposition be, and the same is hereby, made and submitted to the qualified voters of said Mt. Pleasant township, as organized at the date of the issue of said bonds, to compromise and fund the whole of said indebtedness so created by the issue and negotiation of said ninety bonds, together with all interest due thereon at the rate of seventy cents in new funding bonds for each dollar of so much of said old indebtedness, with interest, as has been sued on or reduced to judgment and sixty-five cents in such new funding bonds for each dollar of the remainder of said old indebtedness, with interest, and that for the payment of said old indebtedness there shall be issued, in conformity with the State laws of Missouri, new funding bonds of the county of Bates for and on behalf of said municipal township of Mt. Pleasant, which said new bonds shall be made payable to bearer twenty years after the date thereof and redeemable on published notice at the option of the obligor at any time before maturity and after five years from the date thereof, to bear interest at the rate of six per cent. per annum, to be paid annually, the principal and interest to be paid at the State Savings Association, in the city of St. Louis, Mo., and in case any of said bonds shall be redeemed before maturity thereof all unearned interest not matured at the date of redemption shall be delivered up by the holder, together with the bonds so redeemed; and it is further ordered that this proposition be submitted as aforesaid to the qualified voters as aforesaid to be voted on at a special election to be held in the town of Butler, in said township and county, on the 25th day of August, 1885, and at said election the qualified voters within the municipal township
26 of Mt. Pleasant shall be authorized to vote; and it is further ordered that this proposition be duly signed by all the judges of this court, and then published in the Butler Weekly Times, Bates County Democrat, and the Bates County Record, weekly newspapers published in said municipal township of Mt. Pleasant as last described, there being no daily newspaper published therein, for four successive weeks before said election, the last insertion to be at least ten days before the day of said election, and the sheriff of Bates county shall give public notice of said election.

And it is further ordered Jacob Rosier, Wm. Simpson, A. L. McBride, and John T. Smith be, and they are hereby, appointed judges of said election, and they shall conduct said election according to law, and at said election all those voting for this proposition shall deposit in the ballot-box a written or printed ballot in the following form, to wit, To compromise and fund bonded indebtedness—Yes, and all those who vote against said proposition shall deposit a written or printed ballot in the following form, to wit, To compromise and fund bonded indebtedness—No, and the said judges of election shall count the ballots and certify the result of the election in conformity with the law in such cases; and it is further ordered that all of the old indebtedness not compromised and cancelled

within the six months from the date of issuing the new bonds herein provided for shall remain unsettled, and after the lapse of six months from the date of said bonds this proposition shall be withdrawn as to bonds not then settled, and no new bonds shall thereafter be issued or negotiated.

JOHN A. LEFKER,
Presiding Justice.
W. H. DEJARNETT,
Associate Justice.
W. H. DENNY,
Associate Justice.
JOHN A. LEFKER,
Pres. Judge.

27 STATE OF MISSOURI, } ss:
County of Bates, }

I, James Drysdale, clerk of the county court in and for said county, hereby certify the above and foregoing to be a true copy of the proceedings of our said county court on the day and year above written as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at office, in city of Butler, this the 22nd day of November, 1892.

JAMES DRYSDALE,
[SEAL.] *Clerk of County Court.*

STATE OF MISSOURI, } ss:
County of Bates, }

In the county court of said county, on the 8th day of September, 1885, the following, among other, proceedings were had, viz:

Whereas by an order of this court, made on the 10th day of July, 1885, a proposition to compromise and fund the bonded indebtedness of Mt. Pleasant township, in Bates county, as the said township was organized and bounded when the said indebtedness was authorized and created, as hereinafter more particularly described, was submitted to the qualified voters of said township for their approval or rejection at an election to be held at the city of Butler, in said township, on the 25th day of August, 1885; and whereas it appears to the court that notice of said election was given by publication in the Butler Weekly Times, the Bates County Democrat, and the Record, three weekly newspapers published in said township—there being no daily newspaper published in said
28 township—for four successive weeks, the last insertion of which notice was at least ten days before the 25th day of August, 1885, which notice contained the object and general nature of the said proposition, as follows:

Now, therefore, it is hereby ordered that a proposition be, and the same is hereby, made and submitted to the qualified voters of

said Mt. Pleasant township, as organized at the date of the issue of said bonds, to compromise and fund the whole of said indebtedness so created by the issue and negotiation of said ninety bonds, together with all interest due thereon, at the rate of seventy cents in new funding bonds for each dollar of so much of said old indebtedness, with interest, as has been sued on or reduced to judgment and sixty-five cents in such new funding bonds for each dollar of the remainder of said old indebtedness, with interest, and that for the payment of said old indebtedness there shall be issued, in conformity with the statute laws of Missouri, new funding bonds of the county of Bates for and on behalf of said municipal township of Mt. Pleasant as organized and limited on January 18, 1871, when the old bonds aforesaid were issued, which said new bonds shall be made payable to bearer twenty years after the date thereof and redeemable on published notice, at the option of the obligor, at any time before maturity, and after five years from the date thereof to bear interest at the rate of six per cent. per annum, to be paid annually, the principal and interest to be paid at the State Savings Association, in the city of St. Louis, Missouri, and in case any of said bonds shall be redeemed before maturity thereof all unearned interest not matured at the date of redemption shall be delivered up by the holder, together with the bonds so redeemed.

And it is further ordered that this proposition be submitted as aforesaid to the qualified voters as aforesaid, to be voted on
29 at a special election to be held in the town of Butler, in said township and county, on the 25th day of August, 1885, and at said election the qualified voters within the municipal township of Mt. Pleasant shall be authorized to vote.

And it is further ordered that this proposition be duly signed by all the judges of this court and then published in the Butler Times, Bates County Democrat, and Record, weekly newspapers published in said municipal township of Mt. Pleasant, as last described (there being no daily newspaper published therein), for four successive weeks before said election, the last insertion to be at least ten days before the day of said election, and the sheriff of Bates county shall give public notice of said election.

And it is further ordered that J. Rosier, Wm. Simpson, J. T. Smith, and A. L. McBride be, and they are hereby, appointed judges of said election, and they shall conduct said election according to law, and at said election all the voting for this proposition shall deposit in the ballot-box a written or printed ballot in the following form, to wit, To compromise and fund bonded indebtedness—Yes, and all those who vote against said proposition shall deposit a written or printed ballot in the following form, to wit, To compromise and fund bonded indebtedness—No, and the said judges of election shall count the ballots and certify the result of the election in conformity with the law in such cases.

And it is further ordered that all of the old indebtedness not compromised and cancelled within six months from the date of issuing the new bonds herein provided for shall remain unsettled,
30 and after the lapse of six months from the date of said bonds

this proposition will be withdrawn as to bonds not then settled and no new bonds shall thereafter be issued or negotiated.

JOHN A. LEFKER,
W. W. DENNY,
W. H. DEJARNETT,
County Court Justices.

And whereas it appears to the court that said election was duly held in conformity with the statutes of the State governing State and county elections in the said city of Butler, at the court-house, being the usual polling place for said township; and whereas the clerk of this court and two of the judges thereof, having within five days after the close of the said election examined and counted up the vote cast thereat, did ascertain and have filed in this court a certificate showing that at said election four hundred and thirty-one votes of qualified voters were cast in favor of compromising and funding said indebtedness and one hundred and seventeen votes of qualified voters were cast against compromising and funding said indebtedness; and whereas it appears to the court that a majority of the qualified votes of said township, as above described, voting at said election did vote in favor of compromising and funding said indebtedness:

Therefore be it ordered that this court will compromise with any person holding any part of the old indebtedness of said township and presenting the same for compromise within the time fixed in said order, and in satisfaction thereof will issue to such person bonds of the county of Bates for and in behalf of said township at the rate of seventy cents for each dollar of so much of said old indebtedness, with interest, as had been sued on or reduced to
31 judgment on the 10th day of July, 1885, and sixty-five cents for each dollar of so much of said old indebtedness, with interest, as had not then been sued on or reduced to judgment. Said bonds shall bear date the 1st day of October, 1885, shall be payable the first day of October, 1905, and shall bear interest at the rate of six per cent. per annum, which interest shall be evidenced by coupons payable on the 1st day of April in each year, except the first coupon, which shall be payable on the first day of January, 1887, and the last coupon, which shall be payable on the 1st day of October, 1905. Said bonds shall be in denominations of one thousand dollars and one hundred dollars each and shall be signed by the presiding judge of this court and attested by the clerk with the seal of this court, and, with their coupons, shall be payable to bearer at the State Savings Association, in the city of St. Louis, and said coupons shall be signed by the clerk of this court, and said bonds shall be redeemable at any time after the first day of October, 1890, at the option of this court, and in case any bond shall be redeemed before maturity all unearned interest not matured at the date of redemption shall be delivered up by the holder, together with such bonds.

All bonds of the denomination of one hundred dollars shall be redeemed before those of the denomination of one thousand dollars shall be called for redemption. All bonds shall be numbered con-

secutively and shall be called for redemption in numerical order, beginning with the lowest number.

Before any bond can be redeemed notice shall be given by advertisement published for thirty days in some daily newspaper published in the city of St. Louis, specifying the bond or bonds to be redeemed and the time and, in case the said State Savings
32 Association shall cease to exist, the place in said city at which the same shall be presented for redemption. Such notice shall be given for thirty days before the first days of April, July, October, or January, and any bond specified in said notice which shall be presented at the place named and at the time fixed in said notice or within thirty days thereafter shall be redeemed by paying the principal thereof, together with interest to the day of presentment, and if any bond called be not redeemed when presented or within thirty days thereafter the notice of redemption thereof shall be void. If any bond be not presented as required in such notice or within thirty days after the date therein fixed, interest thereon shall cease from said date, but said bond, with interest accrued to said date, shall be payable upon presentation at the office of the treasurer of Bates county at any time thereafter.

Be it further ordered that John A. Lefker be appointed agent to contract for the engraving of said bonds and coupons, subject to the approval of the court.

STATE OF MISSOURI, } ss:
County of Bates, }

I, James Drysdale, clerk of the county court in and for said county, hereby certify the above and foregoing to be a true copy of the proceedings of our said county court on the day and year above written as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at office, in city of Butler, this the 22nd day of November, 1892.

JAMES DRYSDALE,
Clerk of County Court.

33 The defendant to sustain the issues on its part offered the following evidence, to wit:

1. The files and record entries in the case of Norman De V. Howard *v.* Bates County, No. 1575 in this court, to wit:

The petition filed in said cause on the 13th day of November, A. D. 1889, is in words and figures as follows:

UNITED STATES OF AMERICA,
Western District of Missouri, Western Division, } *ss:*

In the Circuit Court.

NORMAN DE V. HOWARD, Plaintiff,
vs.
BATES COUNTY (for MT. PLEASANT TOWNSHIP), Defendant.

The plaintiff, a citizen of the State of Florida, complains of the *the* defendant, a county of the State of Missouri, and of Mt. Pleasant township, a municipal township for election purposes in said county, and says that heretofore, to wit, on the 5th day of April, 1870, twenty-five persons, tax-payers and residents of said township, did petition the county court of said county setting forth their desire as a township to subscribe the sum of ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company and to issue bonds in payment of such subscription; that thereupon said county court ordered an election to be held in said township on the third day of May, 1870, to determine whether or not such subscription should be made and such bonds should be issued; that said election was held as ordered and two-thirds
34 of the qualified voters of said township who voted thereat voted in favor of such subscription and of such issuing of bonds; that said company was at all the dates aforesaid a corporation existing under and by virtue of the laws of the State of Missouri; that on the 14th day of June, 1870, said subscription was made by said court to the capital stock of said company, and the same was on the 17th day of June accepted by the said company; that on the 18th day of July, 1870, a corporation styled the Pleasant Hill division of the Lexington, Chillicothe & Gulf Railroad Company was incorporated under and by virtue of the laws of the State of Missouri; that on the 4th day of October, 1870, the said two corporations consolidated into one corporation under the name of the Lexington, Lake & Gulf Railroad Company; that the terms and conditions of said consolidation were such that the said Lexington, Lake & Gulf Railroad Company became entitled to have, demand, sue for, recover, and receive the said subscription and the bonds to be issued in payment thereof; that on the 18th day of January, 1871, said county court caused said subscription to be made and transferred to said Lexington, Lake & Gulf Railroad Company and caused the said bonds to the amount of ninety thousand dollars to be executed and issued in payment thereof; that by each of the said bonds the said county acknowledged itself indebted and firmly bound to the said Lexington, Lake & Gulf Railroad Company in the sum of one thousand dollars, which said sum the said county, for and in behalf of Mt. Pleasant township, promised to pay to the said railroad company or bearer, at the Bank of America, in the city and State of New York, on the 18th day of January, 1886, together with interest thereon from the 18th day of January,
35 1871, at the rate of ten per cent. per annum, said interest to be payable annually on the presentation and delivery at the

said bank of the coupons to the said bonds attached; that the said bonds were all signed by one B. H. Thornton, who was then the presiding justice of said county court, and were attested by one W. J. Smith, who was then the clerk of the said court, and were sealed with the seal of said court; that attached to each of said bonds were coupons for interest to accrue as aforesaid, by each of which coupons the said county acknowledged to owe and promised to pay to bearer the sum of one hundred dollars on the 18th day of January of the year named in said coupon at the said bank, and that each of said coupons was signed by said Smith, clerk as aforesaid.

Plaintiff states that he is the owner and bearer of sundry of said bonds and coupons, to wit, bonds numbered 33 and 35; also coupons attached to said bonds for interest to accrue and be due January 18th, 1886; also coupons attached to said bonds for interest to accrue and be due January 18th, 1885; also coupons attached to said bonds for interest to accrue and be due January 18th, 1884; also coupons attached to said bonds for interest to accrue and be due January 18th, 1883; also coupons attached to said bonds for interest to accrue and be due January 18th, 1882; also coupons attached to said bonds for interest to accrue and be due January 18th, 1881; also coupons attached to said bonds for interest to accrue and be due January 18th, 1880, and that the said bonds and coupons remain wholly unpaid.

Wherefore plaintiff prays judgment for the amount of the said bonds and coupons, with interest, and for his costs.

T. K. SKINKER,
Attorney for Pl'ff.

36 And thereupon a writ of summons was issued, which writ, with the return of the marshal, was returned and filed the 7th day of December, A. D. 1889.

Said summons and the return thereto are in words and figures as follows:

UNITED STATES OF AMERICA, } *sct:*
Western Division of the Western District of Missouri, }

The President of the United States of America to the marshal of the United States for the western district of Missouri, Greeting:

You are hereby commanded to summon the County of Bates, in the State of Missouri and the western division of the western district thereof, to be and appear before the honorable circuit court of the United States in and for the western division of the western district of Missouri on the first day of the next term, to be begun and holden at the city of Kansas, in said district, on the first Monday, the 2nd day, of March next, then and there to answer the complaint of Norman De V. Howard, a citizen of the State of Florida, as set forth in the petition filed in the office of the clerk of said court on the 13th day of November, A. D. one thousand eight hundred and eighty-nine.

Hereof fail not, and have you then and there this writ.

Witness the Honorable M. W. Fuller, Chief Justice of the Supreme Court of the United States, the 13th day of Novem-
[SEAL.] ber, A. D. eighteen hundred and eighty-nine. Issued at office, in the city of Kansas, in said district, under the seal of said circuit court, the day and year last aforesaid.

WARREN WATSON, *Clerk.*

37 WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI, } *sct:*

I do hereby certify that I served the within writ by delivering a true copy thereof, together with a true copy of the petition in the cause, to T. L. Harper, clerk of the county court of Bates county, at his office, in the town of Butler, in the western district of Missouri, December 4th, 1889.

ELIJAH GATES,
United States Marshal.

And afterwards, to wit, on the 3rd day of March, A. D. 1890, the following entry appears of record:

N. DE V. HOWARD *against* BATES COUNTY. } 1575.

Defendant files demurrer to petition.
Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

NORMAN DE V. HOWARD, Plaintiff, *vs.* BATES COUNTY (for MT. PLEASANT TOWNSHIP), Defendant. }

Now comes the said defendant and demurs to the petition filed in this case, and for cause of demurrer defendant shows that this court has no jurisdiction of the subject of the action in said peti-
38 tion stated, for the reason that it appears from said petition that the matter in dispute does not exceed, exclusive of the interest and costs, the sum or value of two thousand dollars.

JOHN T. SMITH,
GATES & WALLACE,
Att'ys for Defendant.

And afterwards, to wit, on the 24th day of March, A. D. 1890, the following entry appears of record:

NORMAN DE V. HOWARD *against* BATES COUNTY. } 1575.

This cause is this day submitted to the court and taken under advisement.

And afterwards, to wit, on the 1st day of September, A. D. 1890, the following entry was made of record:

N. DE V. HOWARD
against
BATES COUNTY. } 1575.

The demurrer to the petition having been heretofore submitted to the court, it is now ordered that the same be sustained.

And afterwards, to wit, on the 2nd day of March, A. D. 1891, the following entry was made of record:

NORMAN DE V. HOWARD
against
BATES COUNTY. } 1575.

This day comes the plaintiff, by his attorney, and says he
39 will no further prosecute this case. Thereupon it is ordered that this cause be dismissed at plaintiff's costs, and that execution issue therefor.

2. The defendant further offered the following evidence, to wit:

The files and record entries in the case of James C. Edwards *vs.* Bates County, No. 1666, in this court, to wit:

The petition filed in said cause on the 16th day of January, A. D. 1891, is in words and figures as follows:

UNITED STATES OF AMERICA,
Western District of Missouri, Western Division, } *set:*

In the Circuit Court.

JAMES C. EDWARDS, Plaintiff,
vs.
BATES COUNTY, Defendant.

The plaintiff, a citizen of the State of New York, complains of the defendant, a county in the State of Missouri, and of Mt. Pleasant township, a municipal township for election purposes in said county, and for cause of action states that heretofore, to wit, on the 5th day of April, 1870, twenty-five persons, tax-payers and residents of said township, presented a petition to the county court of said county, setting forth their desire as a township to subscribe to the capital stock of the Lexington, Chillicothe & Gulf Railroad Company the sum of ninety thousand dollars for the purpose of aiding in the construction of the railroad of said company, said sum to be payable in bonds of the said township; that thereupon said county court
40 ordered an election to be held in said township on the third day of May, 1870, to determine whether such subscription should be made to said company; that said election was held as ordered and two-thirds of the qualified voters of said township who voted thereat voted in favor of such subscription; that said com-

pany was at said several dates a corporation existing under and by virtue of the laws of the State of Missouri; that afterwards, to wit, on the fourteenth day of June, 1870, said subscription was made by said court to the capital stock of said company, and the same was, on the 17th day of June, 1870, accepted by said company; that afterwards, to wit, on the 4th day of October, 1870, said company was consolidated with a certain other company, incorporated on the 18th day of July, 1870, under and by virtue of the laws of said State and known as the Pleasant Hill division of the Lexington, Chillicothe & Gulf Railroad Company, under the name of the Lexington, Lake & Gulf Railroad Company; that by the terms and conditions of the contract of consolidation the said Lexington, Lake & Gulf Railroad Company became entitled to have, demand, sue for, recover, and receive the said subscription and the bonds to be issued in payment thereof; that on the 18th day of January, 1871, said county court caused said bonds to be executed and issued and caused said subscription to be made and transferred to said Lexington, Lake & Gulf Railroad Company; that among the bonds thus executed and issued was a certain bond in words and figures following, to wit:

UNITED STATES OF AMERICA,
State of Missouri, County of Bates.

No. 33. $1,000.00

Issued pursuant to articles of consolidation in payment of stock due the Lexington, Lake & Gulf Railroad Company.

41 Know all men by these presents, that the County of Bates, in the State of Missouri, acknowledges itself indebted and firmly bound unto the Lexington, Lake & Gulf Railroad Company, in the sum of one thousand dollars, which sum, the said County of Bates, for and on behalf of Mount Pleasant township therein, promises to pay to the said Lexington, Lake & Gulf Railroad Company or bearer, at the Bank of America, in the city and State of New York, on the 18th day of January, 1886, together with interest thereon from the 18th day of January, 1871, at the rate of ten per cent. per annum, which interest shall be payable annually, on the presentation and delivery at said Bank of America of the coupons hereto attached. This bond being issued under and pursuant to an order of the county court of Bates county, by virtue of an act of the General Assembly of the State of Missouri approved March 23rd, 1868, entitled "An act to facilitate the construction of railroads in the State of Missouri," and authorized by a vote of the people taken May 3rd 1870, as required by law, upon the proposition to subscribe ninety thousand dollars to the capital stock of the Lexington, Chillicothe & Gulf Railroad Company, and which said railroad company last aforesaid and the former Pleasant Hill division of the Lexington, Chillicothe & Gulf Railroad Company were on the 4th day of October, 1870, consolidated as required by law, into one company under the name of the Lexington, Lake & Gulf Railroad Company, and which said last-named railroad company, as provided by law and under the terms of said consolidation

thereof, possesses all the powers, rights and privileges and owns and controls all the assets, subscriptions, bonds, moneys and properties whatever of the two said several companies forming said consolidation or either of them.

In testimony whereof the said County of Bates has executed
42 this bond by the presiding justice of the county court of said county, under the order thereof, signing his name hereto, and by the clerk of said court under the order thereof, attesting the same and affixing the seal of said court. This done at the city of Butler, county of Bates, this 18th day of January, 1871.

B. H. THORNTON,

Presiding Justice of the County Court of Bates County, Missouri.

Attest:

[County Court Seal, Bates County, Mo.]

W. J. SMITH,

Clerk of the County Court of Bates County, Mo.

That among the bonds thus executed and issued was a certain other bond in words and figures the same as the foregoing, except that it was numbered 35; that both of said bonds were signed by one B. H. Thornton, then presiding justice of said county court, and were sealed with the seal of said court and attested by one W. J. Smith, then clerk of said court; that attached to said bond were coupons, one of which is in words and figures following:

$100.00. BUTLER, BATES COUNTY, Mo., *January 18th*, 1871. $100.00.

The County of Bates acknowledges to owe the sum of one hundred dollars, payable to bearer on the 18th day of January, 1873, at the Bank of America, in the city and State of New York, for one year's interest on bond No. 33.

W. J. SMITH,

Clerk of the County Court of Bates County, Mo.

That all the other coupons were the same in words and figures as the foregoing, except as to the dates of maturity, and that
43 he is the bearer and holder for value of twenty-eight of said coupons, each for one hundred dollars, as follows:

Two coupons due January 18th, 1873;
Two coupons due January 18th, 1874;
Two coupons due January 18th, 1875;
Two coupons due January 18th, 1876;
Two coupons due January 18th, 1877;
Two coupons due January 18th, 1878;
Two coupons due January 18th, 1879;
Two coupons due January 18th, 1880;
Two coupons due January 18th, 1881;
Two coupons due January 18th, 1882;
Two coupons due January 18th, 1883;
Two coupons due January 18th, 1884;

Two coupons due January 18th, 1885;
Two coupons due January 18th, 1886;
and that all said coupons remain wholly unpaid. Wherefore plaintiff prays judgment for the said sum of twenty-eight hundred dollars, together with interest on each coupon from the date of its maturity, and for costs.

T. K. SKINKER,
Attorney for Plaintiff.

And afterwards, to wit, on the 16th day of January, A. D. 1891, a writ of summons was issued, directed against the county of Bates; which writ, with the return of the marshal thereon, was returned and filed on the 22nd day of January, A. D. 1891.

Said writ of summons and return of the marshal are in words and figures as follows, to wit:

UNITED STATES OF AMERICA, } *sct:*
Western Division of the Western District of Missouri, }

44 The President of the United States of America to the marshal of the United States for the western district of Missouri, Greeting:

You are hereby commanded to summon The County of Bates, in the State of Missouri and the western division of the western district thereof, to be and appear before the honorable circuit court of the United States in and for the western division of the western district of Missouri on the first day of the next term thereof, to be begun and holden at the city of Kansas, in said district, on the first Monday, the 2nd day, of March next, then and there to answer the complaint of James C. Edwards, a citizen of the State of New York, as set forth in the petition filed in the office of the clerk of said court on the 16th day of January, A. D. one thousand eight hundred and ninety-one.

Hereof fail not, and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 16th day of Janu-
[SEAL.] ary, A. D. eighteen hundred and ninety-one. Issued at office, in the city of Kansas, in said district, under the seal of said circuit court, the day and year last aforesaid.

WARREN WATSON, *Clerk,*
By A. UTTER, *Deputy Clerk.*

WESTERN DIVISION OF THE WESTERN } *sct:*
DISTRICT OF MISSOURI, }

I do hereby certify that I served the within writ by delivering a true copy thereof, together with a true copy of the petition in the cause, to James Drysdale, county clerk, in his office, at Butler,
45 Missouri, on the 17th day of January, 1891; all done in the western division of the western district of Missouri.

JOHN P. TRACEY,
United States Marshal,
By JOHN OECHSLI, *Deputy.*

And afterwards, to wit, on the 2nd day of March, A. D. 1891, the following entry appears of record:

JAMES C. EDWARDS
against } 1666.
BATES COUNTY.

This day comes defendant, by its attorney, and files demurrer to plaintiff's petition.

Said demurrer is in words and figures as follows:

In the United States Circuit Court for the Western Division of the Western District of Missouri, March Term, 1891.

JAMES C. EDWARDS, Plaintiff,
vs. } Number 1666.
BATES COUNTY, Defendant.

Demurrer to Plaintiff's Petition.

Now comes the defendant and demurs to *to* the petition filed in this case, and for cause of demurrer the defendant shows that this court has no jurisdiction of the subject of the action in said petition stated, for the reason that it appears from the said petition that *that* the matter in dispute does not exceed, exclusive of interest and costs, the sum or value of two thousand dollars ($2,000.00), and it appears from said petition that the sum demanded is interest exclusively.

GATES & WALLACE,
Attorneys for the Defendant.

46 And afterwards, to wit, on the 28th day of September, A. D. 1891, the following entry appears of record, to wit:

JAMES C. EDWARDS
against } 1666.
BATES COUNTY.

This day comes the parties, by their attorneys, and thereupon the defendant files amended demurrer to the petition and the same is heard and submitted.

Said amended demurrer is in words and figures as follows:

In the United States Circuit Court for the Western Division of the Western District of Missouri, September Term, 1891.

JAMES C. EDWARDS, Plaintiff,
vs.
BATES COUNTY, Defendant.

Now comes the defendant and for its amended demurrer to the petition filed in this case shows that—

First. This court has no jurisdiction of the subject of the action

in said petition stated for the reason that it appears from said petition that the matter in dispute does not exceed, exclusive of interest and costs, the sum or value of two thousand dollars ($2,000.00), and it appears from said petition that the sum demanded is interest exclusively.

Second. That said petition, as to the coupons which it alleges became due Jan. 18th, 1873, Jan. 18, 1874, Jan. 18th, 1875, Jan. 18th, 1876, Jan. 18th, 1877, Jan. 18th, 1878, Jan. 18th, 1879, and
47 Jan. 18th, 1880, does not state facts sufficient to constitute a cause of action against the defendant, in that none of the causes of action on said coupons accrued within ten years before the commencement of this suit.

Third. That this court has no jurisdiction of the subject-action in said petition stated, in that it appears from the said petition that the matter in dispute does not exceed, exclusive of interest and costs and said coupons, which are barred by the statute of limitations, the sum or value of two thousand dollars.

GATES & WALLACE,
Attorneys for Defendant.

And afterwards, to wit, on the 5th day of October, A. D. 1891, the following entry was made of record in this cause:

JAMES C. EDWARDS
against
BATES COUNTY. } 1666.

The amended demurrer of the defendant to the petition herein having been heretofore heard and submitted, it is now ordered that the same be sustained as to coupons barred and overruled as to rest, with leave to defendant to plead over by December 1 next, copy of plea to be furnished plaintiff by defendant.

And afterwards, to wit, on the 1st day of December, A. D. 1891, defendant files answer.

Said answer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

48 JAMES C. EDWARDS, Plaintiff,
vs.
BATES COUNTY, Defendant. }

Now comes defendant in this cause and for answer to the plaintiff's petition says:

First. That on the 5th day of October, 1891, this court sustained the defendant's demurrer in part to the plaintiff's petition, wherein it was determined that the plaintiff had no cause of action against the defendant upon the two coupons herein sued on alleged to be due Jan. 18th, 1873, the two coupons alleged to be due Jan. 18th, 1874, the two coupons alleged to be due Jan. 18th, 1875, the two

coupons sued on alleged to be due Jan. 18th, 1876, the two coupons alleged to be due Jan. 18th, 1877, the two coupons alleged to be due Jan. 18th, 1878, the two coupons alleged to be due Jan. 18th, 1879, the two coupons alleged to be due Jan. 18th, 1880, because the said coupons were barred by the statute of limitations, and that the amount claimed to be due the plaintiff upon the petition as it now stands does not now exceed the sum or value of two thousand dollars, exclusive of interest and costs.

Second. That on November 13, 1889, one Norman De V. Howard, claiming to be a citizen of the State of Florida, by his attorney, T. K. Skinker, who is the attorney also of the plaintiff herein, filed his petition in this court against the defendant, in which he claimed and alleged that he was the owner of the said bonds Nos. 33 and 35, described in the petition herein, and of the said two coupons alleged to be due Jan. 18th, 1880, the two coupons alleged to be due Jan. 18th, 1881, the two coupons alleged to be due Jan. 18th, 1882, the two coupons alleged to be due Jan. 18th, 1883, the two coupons alleged to be due Jan. 18th, 1884, the two coupons alleged to
49 be due Jan. 18th, 1885, and the two coupons alleged to be due Jan. 18th, 1886; that a demurrer was filed to the said petition of the said Norman De V. Howard on March 3rd, 1890, for the reason that this court had no jurisdiction of the cause of action set forth in said petition, because the amount in controversy in the said suit did not exceed the sum of two thousand dollars; that on September 1st, 1890, the said demurrer was sustained by this court for the cause stated in said demurrer; and afterwards, to wit, on March 2nd, 1891, which was long after the filing of the plaintiff's petition herein, the said Norman De V. Howard, by his said attorney, T. K. Skinker, dismissed his said suit. The defendant alleges that the said Norman De V. Howard and the plaintiff herein, through their said attorney, T. K. Skinker, by combining with coupons owned by the said Norman De V. Howard and upon which a suit was still pending in this court coupons which were barred by the statute of limitations of the State of Missouri and which the plaintiff and his said attorney well knew were no valid claim against this defendant and upon which they had no hope or expectation that they could obtain any judgment against the defendant, in that all right of action upon said last-mentioned coupons had long since ceased, are attempting to bring plaintiff's alleged cause of action in this court, when they well know that this court has no jurisdiction thereof.

Wherefore defendant says that this court has no jurisdiction of the matter in controversy in this suit and prays that this suit be dismissed.

And for another and further answer to the plaintiff's petition defendant denies each and every allegation in said petition contained, except, however, that this defendant is one of the counties of the State of Missouri, and Mount Pleasant is one of the townships of said county, and that the bonds and coupons described
50 therein were issued by the county court of Bates county,

Missouri, in payment of an alleged subscription to the stock of the Lexington, Lake and Gulf Railroad Company.

The defendant denies that any subscription was ever made by the said county court to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company or was ever accepted by said company, and the defendant says there never was any contract made by the county court with the said company.

The defendant denies that the Lexington, Chillicothe and Gulf Railroad Company and a corporation of the name of the Pleasant Hill division of the Lexington, Chillicothe & Gulf Railroad Company were ever legally consolidated into one corporation under the name of the Lexington, Lake and Gulf Railroad Company, and defendant says that no meeting of the stockholders of the Lexington, Chillicothe & Gulf Railroad Company was ever regularly called for the purpose of making such a consolidation as required by law, and no notice was ever given to the stockholders of said company or the directors thereof residing in Bates county or Mount Pleasant township of any such meeting required by law, nor did any of such stockholders or directors appear or participate in any such meeting, nor was the stock alleged to *to* have been subscribed by Mt. Pleasant township in any manner represented in any such meeting. The defendant denies that the terms and conditions of said pretended consolidation were such that the Lexington, Lake and Gulf Railroad Company became entitled to have, demand, sue for, recover, or receive the said alleged subscription or the bonds to be issued in payment therefor. The defendant says that such alleged pretended consolidation was void in law because the effect thereof would be to deprive the public the benefit of competition between the said railroads, contrary to the statute in such case made and provided.

51 The defendant denies that the county court of Bates county caused any subscription to the stock of the Lexington, Chillicothe and Gulf Railroad Company to be made or transferred to the Lexington, Lake & Gulf Railroad Company.

The defendant says that the bonds and coupons described in plaintiff's petition were issued by the county court of Bates county without authority in fact or law and are null and void.

The defendant denies that the plaintiff is the owner of the coupons herein sued on, and the defendant has not sufficient knowledge or information to form a belief whether the plaintiff is a citizen or resident of the State of New York.

And the defendant, having fully answered, asks to be discharged hence and that it recover of the plaintiff its costs.

GATES & WALLACE,
Attorneys for Defendant.

And afterwards, to wit, on the 29th day of November, A. D. 1892, the following entry was made of record, to wit:

JAMES C. EDWARDS
against } 1666.
BATES COUNTY.

This day comes the plaintiff and says he will no further prosecute this case; whereupon it is ordered that this case be, and it is hereby, dismissed at plaintiff's costs, and that execution issue therefor.

3. The defendant further offered the following agreed statement of facts, to wit:

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

52 JAMES C. EDWARDS, Plaintiff,
vs. } No. 1758.
BATES COUNTY, Defendant.

It is hereby admitted and agreed by the parties hereto that the following facts are true, viz:

That the defendant for 30 days prior to the 1st day of July, 1891, caused an advertisement to be published in a daily newspaper in the city of St. Louis, specifying, among others, that the funding bonds sued on herein, numbers 20, 27, 46, 47, 48, 49, and 50, for redemption, and specifyining also the 1st day of July, 1891, as the time for redemption and (State Savings Association having ceased to exist) the State Bank of St. Louis, in said city, as the place at which said bonds should be presented for payment, a printed copy of which advertisement is hereto annexed; that none of said funding bonds, numbers 20, 27, 46, 47, 48, 49, and 50, were ever presented at any time for payment at said State Bank of St. Louis, nor were any of said bonds ever presented at any time for payment at the office of the treasurer of said Bates county; that on said 1st day of July, 1891, and for more than thirty days thereafter said Bates county had on deposit with said State Bank of St. Louis sufficient funds belonging to said Mt. Pleasant township to pay any and all of said bonds, which funds had been deposited with said bank for that special purpose; that said Bates county had in the hands of its county treasurer money sufficient belonging to said township to pay said bonds at any and all times after said thirty days from said 1st day of July, 1891, if they had been presented for payment by the holder thereof.

GATES & WALLACE,
Att'ys for Defendant.
T. K. SKINKER,
Att'y for Pl'ff.

53 *Copy of Advertisement.*

To the holder or holders of Mt. Pleasant Township bonds, each of $100, bearing interest at six per cent. per annum, issued by Bates county for and in behalf of said township, dated on the 1st day of October, 1885, payable on the 1st day of October, 1905, at the State Savings Association, in St. Louis, Mo., and redeemable at the option of Bates county at any time after five years from said 1st day of October, 1885:

You are hereby notified that by order of the county court of Bates county, made on the 18th day of May, 1891, the above-described bonds were declared due and payable at the State Bank of St. Louis, in St. Louis, Mo., on the 1st day of July, 1891, as follows:

Bonds numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50 will be paid, both principal and accrued interest to said date, out of monies raised by taxation in said township for this purpose, and all bonds above described and numbered that are not so presented for payment in accordance with this call shall cease to draw interest from said date.

C. HIRNI,
Treasurer Bates County, Mo.

4. The defendant also offered the affidavit of C. Hirni as follows:

C. Hirni, being duly sworn, makes oath and says that he was April 1st, 1891, and has been ever since treasurer of Bates county, Missouri; that 30 days prior to July 1st, 1891, he caused a notice to be published in a daily newspaper of St. Louis, Mo., specifying that the funding bonds of said Bates county, Nos. 20,
27, 46, 47, 48, 49, and 50, among others, issued on behalf of
54 Mt. Pleasant township, in said county, for redemption, and the State Bank of St. Louis, in said city, as the place, and July 1st, 1891, as the time when said bonds should be presented for payment; that prior to said 1st day of July, 1891, he, as such treasurer of Bates county, sent to said State bank at St. Louis sufficient funds belonging to said Mt. Pleasant township to pay any and all said bonds if they had been presented to such bank for payment, which funds remain on deposit with said bank for that purpose for more than thirty days after July 1st, 1891; that this affiant has had in his possession as such county treasurer money belonging to said Mt. Pleasant township sufficient to pay said bonds at any and all times after said thirty days from said 1st day of July, 1891, if they had been presented at the office of the treasurer of said Bates county; that none of said bonds above mentioned have been presented at his said office for payment, and if any or all of them had been presented for payment at any time thirty days from after said 1st day of July, 1891, at the office of the treasurer of said Bates county they would have been paid. C. HIRNI.

Subscribed and sworn to before me this 29th day of November, 1892.

My commission expires Nov. 9th, 1895.

[SEAL.]

GEO. MILLER, JR.,
Notary Public, Jackson Co.

This was all the evidence offered by the parties.

And afterwards, the court having sustained the plea to the jurisdiction and entered judgment thereon for the defendant, the plaintiff at the same term of court and within four days after the
55 trial and judgment, to wit, on the 27th day of April, 1893, filed a motion for new trial in words and figures following, to wit:

In the United States Circuit Court for the Western Division of the Western District of Missouri, April Term, 1893.

JAMES C. EDWARDS, Plaintiff,
vs.
BATES COUNTY, Defendant.

Now, at this day, comes the plaintiff and moves the court to set aside the findings herein and grant a new trial for the following reasons:

1st. Because the finding is contrary to the evidence.

2nd. Because the judgment was contrary to the law and the evidence.

3rd. Because on the pleadings and evidence herein the finding should have been for the plaintiff.

WARNER, DEAN & HAGERMAN,
For Plaintiff.

This motion for a new trial was overruled by the court, and the plaintiff then and there duly excepted to the action of the court, and to the end that his said exceptions may be preserved he tenders this his bill of exceptions and prays that the same may be allowed and signed, which is accordingly done.

(Signed) JNO. F. PHILIPS,
U. S. Dist. Judge.

And, further, the court certifies that the question presented by the pleadings and evidence in this case was whether or not the court had jurisdiction of the case, and this question was determined
56 in the negative, and the court certifies this question to the Supreme Court for decision.

(Signed) JNO. F. PHILIPS,
U. S. Dist. Judge.

And afterwards, to wit, on the 3rd day of July, A. D. 1893, the following assignment of errors was filed by the plaintiff:

JAMES C. EDWARDS, Plaintiff,
vs.
BATES COUNTY, Impleaded in Behalf of MT. PLEASANT TOWNSHIP, Defendant. } No. 1758.

The plaintiff comes and prays that a writ of error be allowed him, and by way of assignment of errors says that the court erred in holding that the matter in dispute in this case does not exceed the sum or value of two thousand dollars, exclusive of interest and costs, and erred in holding that the court has no jurisdiction of this case and in sustaining a plea to the jurisdiction and in entering judgment for the defendant upon such plea.

T. K. SKINKER,
Attorney for Plaintiff.

And afterwards, to wit, on the 3rd day of July, A. D. 1893, a bond for writ of error was filed; which bond is in words and figures as follows:

UNITED STATES OF AMERICA, *set:*

Know all men by these presents that we, James C. Edwards, as principal, and Thomas K. Skinker, as surety, are held and firmly bound unto Bates County, impleaded in behalf of Mount Pleasant township, in the sum of five hundred dollars; to the pay-
57 ment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 25th day of June, A. D. 1893.

Upon the express condition, to wit: Whereas the above-named James C. Edwards has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the cause above named by the circuit court of the United States for the western division of the western district of Missouri: Now, if the above-named James C. Edwards shall prosecute his said writ of error to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation to be void; otherwise to remain in full force and virtue.

Signed and sealed in the presence of—

JAMES C. EDWARDS, [SEAL.]
By T. K. SKINKER, *His Agent.* [SEAL.]
T. K. SKINKER. [SEAL.]

The above bond is hereby approved and ordered to be filed and made a part of the record.

(Signed) JNO. F. PHILIPS, *Judge.*

58 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

JAMES C. EDWARDS
vs.
BATES COUNTY.

Opinion.

PHILIPS, *J.:*

This is a plea to the jurisdiction of the court. A brief recital of the history of this case will decide it. On November 13, 1889, one Norman De V. Howard, through his attorney, Thomas K. Skinker, Esq., instituted suit in this court (case No. 1575) against the defendant county on two (2) bonds issued by the county on account of Mt. Pleasant township. Said bonds were numbered 33 and 35, for $1,000.00 each, with interest coupons thereto attached, maturing for the years respectively 1880, 1881, 1882, 1883, 1884, 1885, 1886.

A demurrer was sustained to this petition September 1, 1890, on the ground that this court did not have jurisdiction, for the reason that the amount involved did not exceed $2,000.00, exclusive of interest and costs. (See Howard *vs.* Bates County, 43 Fed. Rep., 376.)

On January 16, 1891, the plaintiff herein, James C. Edwards, by the same attorney, instituted suit in this court (case No. 1666) against the defendant on the same coupons which were embraced in the Howard suit and on other coupons attached to the same bonds, which matured anterior to January 1, 1880. This suit was
59 brought after the demurrer in the Howard case was sustained and without any dismissal of said suit in favor of Howard.

On March 2, 1891, said suit of Howard was formally dismissed. The defendant demurred to the petition in the said suit of Edwards (No. 1666), which demurrer was by the court sustained as to all of said coupons sued on which matured up to January 1, 1880, for the reason that the cause of action thereon was barred by the statute of limitation.

Without dismissing said case (No. 1666), the plaintiff on Oct. 15, 1891, brought the present suit (No. 1758), in which he includes said bonds numbered 33 and 35, sued on as aforesaid by said Howard, and all the coupons thereto attached from 1873 to 1886, inclusive, and in addition thereto seven (7) funding bonds of the defendant county on account of said township for $100.00 each, dated Oct. 1, 1885, and not maturing on their face until October 1, 1905.

By a condition endorsed on said funded bonds the defendant county, on behalf of said township, reserved the right at its option to redeem said bonds at any time after five (5) years from the first day of October, 1885, with the provision that in case of the redemption of any such bond or bonds before maturity all interest not then earned or matured should be forfeited. Provision was made in said condition for the giving of notice of such election as to the time and place for the presentation of said bonds for redemption. Among other provisions said condition contained the following:

"If any bonds be not presented as required in such notice or within thirty (30) days after the date therein fixed, interest thereon shall cease from said date, but said bond, with interest coupons to said date, shall be payable upon presentment at the office of the treasurer of Bates county at any time thereafter."

60 Conformably to this provision, the defendant gave the required notice that it would redeem said bonds at the State Bank of St. Louis, Missouri, on the 1st day of July, 1891, or within thirty (30) days thereafter, and that if said bonds were not so presented for payment they would cease to bear interest and would be paid upon presentment at the office of the treasurer of the defendant county.

The defendant had the required money for the redemption of said bonds at the designated place and at the time specified, and also had and has kept the requisite money for such special purpose in the county treasury of said county; but the holder of said bonds neither presented the same for redemption at said bank in St. Louis nor to the treasurer of the county.

Without the aid of said funded bonds, the plaintiff unquestionably would have no standing in this court for want of jurisdiction. In Howard *vs.* Bates County, *supra*, it was held that the coupons attached to said bonds were for interest inhering to the principal sum; and as the two bonds 33 and 35 only call for the aggregate principal sum of $2,000.00, the said matter in dispute does not exceed $2,000.00, exclusive of interest and costs.

It must likewise be conceded that the judgment on the demurrer to plaintiff's prior action number 1666 as to the coupons barred by the statute of limitations is *res adjudicata* between the same parties. (Herman on Estoppel, vol. 1, paragraphs 107 to 111, 273 & 274; Bessill *vs.* Township, 124 U. S., 225; Gould *vs.* Evansville Railroad Company, 91 U. S., 526; Louis *vs.* Brown Township, 109 U. S., 162; Nesbitt *vs.* Independent Dis. of Riverside (U. S. Supreme Court), decided April 18, 1892; Price *vs.* Bonnerfield, 2 Wyoming, 80.)

61 The plaintiff undertakes to save the coupons from 1875 to 1880 on said bonds 33 and 35 from the statute of limitations by alleging in his reply an acknowledgment by defendant of the debt within the preceding ten years. It, perhaps, might be sufficient to say this, that where the plaintiff relies upon a fact *de hors* the written instrument to exempt the action from the operation of the statute of limitations he should plead it in the petition, as otherwise the petition would be demurrable on its face. (Keeton *vs.* Keeton, 20 Mo., 530.)

By waiving this the fact relied upon is not sufficient. It is that the defendant within the ten years made an offer to compromise said bonds at a given per cent. This offer was declined by the holders of these two bonds, while all the others accepted the offer. An offer to compromise, unaccepted, cannot be made the basis of a promise to pay so as to stop the running of the statute of limitation (Chambers *vs.* Ruby, 47 Mo., 99). It cannot even be admitted

in evidence. (Cook *vs.* Ins. Co., 70 Mo., 615; Smith *vs.* Shell, 82 Mo., 220; R. R. Co. *vs.* Farrell, 76 Mo., 190.)

Clearly, therefore, unless the plaintiff has a right to judgment on the bonds 33 and 35, he has no footing in this court. His possession of those bonds, if he holds them, excites grave suspicion under all the facts and circumstances before the court. When his first suit was brought the bonds 33 and 35 were presumably in the possession of Howard or his attorney in said case No. 1575. Not until after the demurrer was sustained to so many of the coupons in the suit No. 1666 as brought the amount in dispute below the jurisdiction of this court does he appear claiming ownership of said bonds 33 and 35. The bonds were then past due, and the prior holder had been turned out of this court for the want of jurisdiction over them.

62 How this plaintiff obtained them and for what purpose are unexplained, except by the records in evidence. When the fact, of which this court will take judicial cognizance, is recalled that under existing rulings of the supreme court of the State no action can be maintained on said bonds for the reason that that court now holds the act of the legislature under which the bonds were issued unconstitutional and void, whereas the Supreme Court of the United States holds that said bonds (when of jurisdictional amount) may be recovered on in this jurisdiction on the ground that at the time of their issue and going into circulation as commercial paper the validity of said act was affirmed by the supreme court of the State, it at once becomes apparent why the holder of these two bonds is struggling to obtain a standing in this court. It therefore becomes the duty of this court to scan this transaction with close scrutiny.

The act of March 3, 1887, confers jurisdiction on this court only when "the matter in dispute exceeds the sum or value of $2,000.00, exclusive of interest and costs," and by section 5 of the act of 1875, which is continued in force, it is provided that "if in any suit commenced in the circuit court it shall appear to the satisfaction of said court at any time after suit has been brought that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said circuit court, or that the parties to said suit have been improperly and collusively made * * * for the purpose of creating a cause cognizable by the said circuit court, said court shall proceed no further therein, but shall dismiss the suit."

It is the matter in dispute that controls the question of jurisdiction. Parties cannot make up feigned or simulated mat-

63 ters of controversy to give jurisdiction, nor confer jurisdiction by merely claiming a sum, *eo nomine*, above $2,000.00, when in fact the true amount in dispute is less. "It is undoubtedly true that until it is in some way shown by the record that the sum demanded is not the matter in dispute, that sum will govern in all questions of jurisdiction, but it is equally true that when it is shown that the sum demanded is not the real matter in dispute the sum shown and not the sum demanded will prevail" (Hilton *vs.* Dick-

onson, 108 U. S., 166). In determining this question the court will look at the whole record. So in Tintsman *vs.* National Bank, 100 U. S., 6, it was held that where the only controversy was as to the liability of defendant for the difference between what he admitted was due and what the plaintiff claimed *that* this difference was the amount actually in dispute and determined the question of jurisdiction.

It may be conceded to plaintiff that where it is necessary for the plaintiff to bring the defendant into court in order to obtain from him an admission as to the amount of plaintiff's claim, although the remainder not admitted may be less than $2,000.00, it will invite the jurisdiction of the court. Such was the case of Fuller *vs.* Ins. Co., 37 Fed. Rep., 163.

At the time of the institution of this suit there was no matter in dispute between the plaintiff and defendant as to the funded bonds. The defendant, in the exercise of the option secured to it by the contract in the form of a condition endorsed on the bond, had a right to redeem the bonds before their maturity on giving notice and providing the funds necessary for redemption at the given time and place. This the defendant did and still holds the money in readiness therefor. That act of the defendant stopped the running of interest thereafter and all the plaintiff had to do to get his
64 money on said bonds was to present them for payment. Can he, therefore, for the mere purpose of making a dispute where none exists and in order to bring into this court for adjudication said bonds 33 and 35, which are probably the property of some other person, create a jurisdictional dispute?

Why should the plaintiff lose the interest on his seven funded bonds from the time of the making that deposit for the redemption thereof in 1891, and hire a lawyer and provoke unnecessary litigation and costs on account thereof, when all he had to do or now has to do to obtain payment thereof was and is to present said funded bonds to the treasurer of the defendant county? If such a state of facts be not sufficient to satisfy the court that the real and only matter in dispute is the bonds 33 and 35 and the interest thereon, it does seem to me it would contradict what Judge Story, in 1 Sumner, 408, said: "One cannot wink so hard as not to see."

If the holder of the bonds numbered 33 and 35 under this ruling finds himself without a remedy he will at least have learned the lesson of the moral to the fable of the fox, whose greed of appetite cost him his life.

The plea to the jurisdiction is sustained.

(Signed) JNO. F. PHILIPS, *Judge.*

65 UNITED STATES OF AMERICA, *sct:*

I, Adelaide Utter, clerk of the circuit court of the United States for the western division of the western district of Missouri, do hereby certify that the above and foregoing is a true copy of the record, bill of exceptions, assignment of errors, and all the proceedings in the cause wherein James C. Edwards is plaintiff and Bates County is

defendant, as fully as the same appears on file and of record in my office.

Seal of the United States Circuit Court for the Western District of Missouri, Western Division.

Witness my hand as clerk and the seal of said court.

Done at office, in Kansas City, Missouri, this 11th day of July, A. D. 1893.

ADELAIDE UTTER, *Clerk.*

Endorsed on cover: Case No. 15,370. W. Missouri C. C. U. S. Term No., 259. James C. Edwards, plaintiff in error, *vs.* Bates County, impleaded in behalf of Mount Pleasant township. Filed August 7th, 1893.

APR 6 1936
JAMES H. MCKENNEY,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

JAMES C. EDWARDS,
PLAINTIFF IN ERROR,
vs.
BATES COUNTY, IMPLEADED IN BEHALF OF MOUNT PLEASANT TOWNSHIP,
DEFENDANT IN ERROR.
No. 259.

In Error to the Circuit Court of the United States for the Western District of Missouri, Western Division.

STATEMENT, BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

T. K. SKINKER,
Attorney.

W. J. Kesl, 317 Olive Street.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

JAMES C. EDWARDS,
PLAINTIFF IN ERROR,
vs.
BATES COUNTY, IMPLEADED IN BEHALF OF MOUNT PLEASANT TOWNSHIP,
DEFENDANT IN ERROR.
No. 259.

STATEMENT.

This is an action on bonds and coupons issued by the County Court of Bates County, Missouri, in the name of said county, but on behalf of Mount Pleasant Township in said county. State statutes authorize the issue of such bonds.

Laws of Missouri, 1868, p. 92;
Laws of Missouri, 1879, p. 49.

The petition was filed October 5, 1891. The obligations declared on are as follows:—

1. Two bonds (Nos. 33 and 35) each for the sum of $1,000, which became due January 18, 1886.

2. Twenty-eight coupons each for the sum of $100, being the coupons for interest on said bonds 33 and 35, which became due on the 18th day of January in each of the years 1886, 1885, 1884, 1883, 1882, 1881, 1880, 1879, 1878, 1877, 1876, 1875, 1874, and 1873.

3. Seven funding bonds each for the sum of $100 and numbered respectively, 20, 27, 46, 47, 48, 49 and 50.

Some of the twenty-eight coupons above mentioned being more than ten years past due, the petition avers that within ten years before the bringing of this action the said county by an order of her said County Court duly entered of record and signed by the judges of her said court, acknowledged all of her said coupons and bonds as debts of said county acting for and in behalf of said township.

As to the seven funding bonds the petition avers that they are not payable on their face until the first day of October, 1905, but that in issuing them the county reserved the right to call and redeem them, and that they have been called but have not been redeemed. The petition avers that plaintiff is the bearer and owner of all the bonds and coupons sued on (Transcript, pp. 3–5).

Defendant interposed what is termed in the record a plea to the jurisdiction, to the following effect:—

That in 1889 one Howard sued in the same court on the two bonds 33 and 35 and the coupons thereof which matured in the years 1880 to 1886; that in that suit a de-

murrer was filed alleging as ground of demurrer that the court had no jurisdiction of the action because the amount in controversy, exclusive of interest and costs, did not exceed $2,000; that the demurrer was sustained and Howard afterward dismissed his action; that before this dismissal the present plaintiff sued also in the same court, upon the same bonds and coupons as were included in the Howard case, together with the coupons of the same bonds which matured in the years 1873 to 1879 respectively; that the defendant demurred to the petition on the ground that the 1873 to 1879 coupons were barred; that the court sustained this demurrer, and thereafter the amount claimed to be due by the plaintiff on the petition, as it then stood, did not exceed $2,000 exclusive of interest and costs; that afterwards, without dismissing this suit, the plaintiff Edwards brought the present suit on the same bonds and coupons, together with the seven funding bonds. The plea then avers that the present petition does not state facts sufficient to constitute a cause of action on the coupons of 1873 to 1880 for the reason that it appears upon the face of the petition that any right of action upon said coupons is barred by limitation; that as to the remaining coupons plaintiff has another action pending; that the seven funding bonds will not be due until the year 1905, and were included in this action, as were the barred coupons, not for the purpose of recovering any judgment thereon, but for the purpose and in the attempt to bring within the jurisdiction of the court a controversy which does not exceed, exclusive of interest and costs, the sum of $2,000. The plea then sets forth *in haec verba* the clause in the bonds reserving the right of redemption, and also the conditions under which it was provided that the right should be exercised, all of which are more elaborate than, but in no particular, different from the allegations of the petition. The plea then avers that none of the funding bonds were ever pre-

sented for payment at the time and place designated for their payment, and charges that the plaintiff holds the same and failed to present them for payment for the sole purpose of including them in this suit in the attempt to give this court jurisdiction of the other bonds as aforesaid, and that if said funding bonds had ever been presented they would have been paid. The plea then charges that Howard and this plaintiff, by combining with the bonds and coupons owned by Howard (which are not specified) coupons which are barred by limitation and funding bonds not yet matured, and upon which the plaintiff and Howard and their attorney have no hope or expectation of obtaining any judgment, are attempting to bring within the jurisdiction of this court a matter of controversy which does not exceed $2,000 exclusive of interest and costs (Transcript, pp. 7–9).

A reply was filed to this plea, averring that the first Edwards case (No. 1666) did not, as alleged in the plea, include the two bonds 33 and 35, but only the coupons from those bonds; that in said case (1666) the court refused to sustain a plea to the jurisdiction, though it did sustain a demurrer to the petition, so far as the same was founded on certain coupons. The reply then declares that it is not true that after the demurrer was sustained the amount claimed to be due by plaintiff did not exceed the sum of $2,000 exclusive of interest and costs; that it is not true that the seven funding bonds and the coupons due in the years 1873 to 1880 were included in this action for the purpose and in the attempt to bring within the jurisdiction of the court a controversy which does not exceed $2,000 exclusive of interest and costs, without any purpose, hope or expectation of recovering a judgment thereon, but on the contrary it protests that the plaintiff hopes

and fully expects, and his resolute purpose is, if possible, to recover judgment on the said bonds and coupons as well as all the other bonds and coupons declared on in the petition. It repeats that the funding bonds are due, and that the coupons due in the years 1873 to 1880 have been acknowledged by defendant within ten years, and it claims that plaintiff was of lawful right entitled, if he saw fit, to unite them with his other causes of action, and denies that Howard is or at the institution of this action was the owner of any of the bonds or coupons herein sued on.

THE EVIDENCE.

At the trial of the case, the plaintiff, to sustain the issues on his part, read in evidence two orders made by the County Court of Bates County, in the year 1885.

The first, which was made on the 10th day of July, recites that a petition had been presented to the court by certain resident tax-payers of the township praying for an election on the question of compromising and funding certain bonds, and it orders the election. The petition, which is set forth *in haec verba*, declares that in the year 1871 the County Court of said county caused to be issued certain bonds in the name of Bates County for and on behalf of Mount Pleasant Township in said county, which bonds were all dated on the 18th day of January, 1871, and were payable to the Lexington Lake & Gulf Railroad Company; that said bonds bear interest at the rate of ten per cent per annum, payable annually at the Bank of America in the City of New York, on the 18th day of January of each year from the date thereof; that said bonds were issued and negotiated in the total sum of $90,000 for the purpose of building a railroad into and through said township on a route particularly described in the charter of aid company; that ninety bonds were issued, each for

$1,000, one-third of which, to wit: Bonds numbered from one to thirty, were made payable ten years after date; one-third thereof, to wit: bonds 31 to 60, were made payable fifteen years after date; and the remaining third, to wit: bonds 61 to 90, were made payable twenty years after date; that various suits had been instituted on matured bonds and coupons of said issue and several judgments had been rendered thereon against the county with order that the same be levied and collected by special taxes upon the property of the township; that the total amount of indebtedness then due was about $250,000, of which about $130,000 was in suit or reduced to judgment, and the remainder was in the shape of unsued bonds and coupons. Wherefore the petitioners pray that an election be held for the purpose of determining whether this indebtedness might not be compromised and funded in new bonds on terms specified.

The order then declares that the court finds that in the year 1871 the court caused to be issued and negotiated the ninety bonds described in the petition of the tax-payers, that a small portion of the coupons originally attached to the bonds and maturing in the years 1872 and 1873 had been paid, leaving a total amount "*now due and owing by said township*" of about $250,000, of which about $130,000 was then in suit or reduced to judgment and the remainder was in the shape of unsued bonds and coupons. In consideration of which facts the order directs that an election be held in the township on the 25th day of August, 1885, at which should be submitted a proposition to compromise and fund "the whole of the indebtedness so created by the issue and negotiation of said ninety bonds together with all interest due thereon," at the rate of seventy cents on the dollar for so much of said old indebtedness with interest as had been sued on or reduced to judgment and sixty-five cents on the dollar for the remainder. This

order is signed by all the justices. The second order, which was made on the 8th day of September, 1885, recites that the election was held on the 25th day of August as ordered and resulted in favor of the compromise, and thereupon offers to compromise on the terms above stated with "any person holding any part of the old indebtedness of said township." (Transcript, pp. 14–18.)

The defendant, to sustain the issues on its part, offered evidence as follows:—

1. The files and record entries in the case of Howard *v.* Bates County, No. 1575, same court. The petition in this case was filed November 13th, 1889, and declared on the above mentioned bonds Nos. 33 and 35 and the interest coupons which were attached to them and matured on the 18th day of January in each of the years 1880 to 1886, both inclusive. Defendant demurred to this petition as for want of jurisdiction, assigning as a reason that it appeared from the petition that the matter in dispute did not exceed, exclusive of interest and costs, the sum or value of $2,000. On the first of September, 1890, this demurrer was sustained, and on the 2d of March, 1891, the plaintiff declining to further prosecute, the case was dismissed at his cost (Transcript, pp. 22–25).

2. Defendant also offered in evidence the files and records in the case of James C. Edwards (the present plaintiff) *v.* Bates County, No. 1666, same court. The petition in this case was filed January 16th, 1891, and declared on the 28 coupons of said bonds Nos. 33 and 35, namely the coupons which matured on the 18th day of January, in each of the years 1873 to 1886, both inclusive, but not on the bonds. Defendant demurred to this petition as for want of jurisdiction, assigning as a reason that it appeared from the

petition that the matter in dispute did not exceed, exclusive of interest and costs, the sum or value of $2,000, *and that the sum demanded was interest exclusively;* and further demurred to so much of the petition as related to the coupons which matured in the years 1873 to 1880, both inclusive, on the ground that the causes of action on said coupons did not accrue within ten years before the institution of the suit. On the 5th of October, 1891, this demurrer was sustained so far as it related to the coupons barred by limitation, but was overruled as to the rest. Thereafter the defendant filed an answer, and finally on the 29th of November, 1892, the plaintiff declining to further prosecute, the case was dismissed at his cost (Transcript, pp. 25–33).

3. The defendant also offered evidence showing that the seven funding bonds of $100 each had been called by the county, that the funds necessary to pay them were on deposit in the proper place, that plaintiff had not presented the bonds for payment, and that they would have been paid if presented.

Upon this evidence the court, on the 24th of April, 1893, sustained the plea to the jurisdiction in this case and dismissed the case for want of jurisdiction. Thereupon the plaintiff filed a motion for new trial, which, being overruled, plaintiff took a bill of exceptions and also obtained from the learned district judge who tried the case, a certificate that the question presented by the pleadings and evidence was whether or not the court had jurisdiction of the case and that this question was determined in the negative, and certifying this question to the Supreme Court for decision. Plaintiff also filed an assignment of errors, setting forth that the court erred in holding that the matter in dispute did not exceed the sum or value of $2,000,

exclusive of interest and costs, and erred in holding that the court had no jurisdiction of the case, and in sustaining the plea to the jurisdiction, and in entering judgment for the defendant upon the plea; and thereafter plaintiff sued out this writ of error. (Transcript, pp. 35, 36).

BRIEF.

I.

The twenty-eight $100 coupons are to be counted in ascertaining the amount in dispute.

1. They are not "interest" within the meaning of the act of March 3, 1887, regulating jurisdiction.

2. The sixteen earlier of these twenty-eight coupons cannot be rejected on the ground that they are barred by limitation.

(a) Because, even if they are barred, that goes, not to the jurisdiction, but only to the amount of plaintiff's recovery.

(b) Because they are not barred, having been acknowledged within ten years.

(c) The claim that they are barred is not *res judicata* in favor of defendant.

II.

The seven funding bonds of $100 each are also to be counted.

1. The test of jurisdiction in an action, such as this, on liquidated demands, is the aggregate amount of the instruments sued on.

2. It is immaterial that the defendant was ready and willing to pay these bonds, so long as she had not paid them and did not make tender in court.

3. The matter in dispute is the claim presented on the record, whether contested or uncontested.

III.

The two $1,000 bonds are unquestionably to be counted.

ARGUMENT.

I.

The twenty-eight $100 coupons are not "interest" within the meaning of the act regulating the jurisdiction of the United States courts, and should not therefore be excluded in ascertaining the amount in dispute.

The act provides that the Circuit Court shall have original cognizance of all suits of a civil nature "where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of $2,000."

Act of March 3d, 1887, 25 Stat. L., p. 433.

It is claimed by defendant that these coupons are interest and cannot be counted.

1. Matured coupons are not "interest" within the meaning of the statute.

(a) The consideration for their issue is interest expected to accrue. But when it has accrued and the coupons have become due they themselves bear interest and are therefore, in a true sense, principal. They have been so designated by this court.

In Aurora *v.* West, 7 Wall. 82, Clifford, J., said (p. 105):—

"Being written contracts for the payment of money, and negotiable because payable to bearer and passing from hand to hand, it is quite apparent on general principles that they should draw interest after payment of the *principal* is unjustly neglected or refused."

It seems to be the plain purpose of the act to determine the jurisdiction by the amount of the debt sued for, not counting the costs which are an incident of the action, or the interest which is an incident of the debt. It is not intended to inquire into the consideration of the instrument which constitutes the foundation of the action, and if it is found to be either interest or costs, to exclude the instrument from the count. If it were, then a note, given in consideration of defaulted interest, or of costs incurred in a former action between the parties, could not be the basis of an action in a Federal court. It is obvious that the statute was not intended to exclude such instruments. Yet the consideration of such a note would be interest (or costs) quite as truly as the consideration of these coupons is interest. The difference is only in the time of their issue, the one being before and the other after the accrual of the interest.

Coupons, though given as evidence of interest to accrue, are universally held to be independent obligations, can be separated from the bonds, can be sued on either alone or in connection with the bonds, are subject to the same statutes of limitation as the bonds, and generally are treated just as the bonds are treated; and finally they themselves bear interest. They can not therefore be fairly treated merely as interest — as an incident of another obligation. The statute is satisfied when the interest which accrues on the coupons is excluded.

Moore *v.* Edgefield, 32 Fed. 498.

That this is the true view to take of coupons as causes of action is plain from many decisions of this court characterizing them.

In Knox County *v.* Aspinwall, 21 How. 539, Nelson, J., said (p. 546):—

"A question was made upon the argument, that the suit could not be maintained upon the coupons without the production of the bonds to which they had been attached. But the answer is, that these coupons are warrants for the interest, were drawn and executed in a form and made for the very purpose of separating them from the bond and thereby dispensing with the necessity of its production at the time of the accruing of each installment of interest, and at the same time to furnish complete evidence of the payment of the interest to the makers of the obligation."

In Thomson *v.* Lee County, 3 Wall. 327, Davis, J., said (p. 332):—

"It is not necessary that the holder of coupons, in order to recover on them, should own the bonds from which they are detached. The coupons are drawn so that they can be separated from the bonds, and, like the bonds, are negotiable; and the owner of them can sell them without the production of the bonds to which they were attached and without being interested in them."

In Aurora *v.* West, 7 Wall. 82, Clifford, J., said (p. 105): —

"Coupons are written contracts for the payment of a definite sum of money on a given day, and, being drawn and executed in a given mode, for the very purpose that they may be separated from the bonds, it is held that they are negotiable and that a suit may be maintained on them without the necessity of producing the bonds to which they were attached."

This language was repeated in Cromwell *v.* Sac County, 94 U. S. 351, 362.

In Clark *v.* Iowa City, 20 Wall. 583, Field, J., said (p. 589): —

"Coupons for the different installments of interest are

usually attached to these (municipal) bonds, in the expectation that they will be paid as they mature, however distant the period fixed for the payment of the principal. These coupons when severed from the bonds, are negotiable and pass by delivery. They then cease to be incidents of the bonds and become in fact independent claims; they do not lose their validity, if for any cause the bonds are cancelled or paid before maturity; nor their ability to support separate actions, nor their negotiable character; and the amount for which they are issued draws interest from its maturity. They then possess the essential attributes of commercial paper, as has been held by this court in repeated instances. Every consideration therefore, which gives efficacy to the statute of limitations when applied to actions on the bonds after their maturity, equally requires that similar limitations should be applied to actions upon the coupons after their maturity. Coupons, when severed from the bonds to which they were originally attached, are in legal effect equivalent to separate bonds for the different installments of interest."

So: Walnut *v.* Wade, 103 U. S. 683, 696.

In Amy *v.* Dubuque, 98 U. S. 470, Harlan, J., said (p. 473):—

"We have held in numerous cases not only that suit may be maintained upon unpaid coupons, in advance of the maturity of the principal debt and without producing the bonds, but that the holder of such coupons is entitled to recover interest thereon from their maturity."

In the same case the court quotes from Hershey *v.* Hershey, 18 Iowa, 24, where it is said: "By their agreement the parties have made this interest, when it matures, not simply an incident of the debt, but *pro tanto* the debt itself."

In Koshkonong *v.* Burton, 104 U. S. 668, Harlan, J., said: —

"The coupons are all alike except as to dates of maturity. They are complete instruments, capable of sustaining separate actions, without reference to the maturity or ownership of the bonds."

In Nesbit *v.* Riverside Ind. Dist., 144 U. S. 610, Brewer, J., said: —

"Each matured coupon upon a negotiable bond is a separable promise, and gives rise to a separate cause of action. It may be detached from the bond and sold by itself. Indeed the title to several matured coupons of the same bond may be in as many different persons and upon each a distinct and separate action may be maintained. So, while the promises of the bond and of the coupons in the first instance are upon the same paper, and the coupons are for interest due upon the bond, yet the promise to pay the coupon is as distinct from that to pay the bond, as though the two promises were placed in different instruments, upon different paper."

These decisions, most of which were rendered before the act of 1887 was passed, show the light in which the coupons have always been viewed by this court. While partaking of the nature and characteristics of the bonds to which they belong, they are yet separate and distinct causes of action. Originally intended merely as a convenient means of collecting interest when due, they are now recognized as being capable of transfer either before or after maturity, and stand in all respects on the same footing as the bonds themselves.

In some of the cases quoted, the language of the court would seem to intimate a distinction between coupons severed from the bonds and those not severed. We think no distinction was intended, or exists. Since it is always in the power of the owner of a bond to sever the coupons, the act of severance ought not to be allowed to impart a new

quality to them. It has been declared to be an immaterial circumstance.

Thompson *v.* Perrine, 106 U. S. 589.

Even when accompanied by a transfer to another party it should not be allowed to affect the rights of the maker. These must, on recognized principles, remain the same as against any and every innocent holder, whether he hold the bond only, the coupon only, or both together. In the cases in which severance was referred to, the coupons had been detached, and it was therefore proper enough to limit the rules laid down to severed coupons; but it should not from this be inferred that the coupons are any less negotiable instruments or any less independent claims before than after severance. The other cases show that they are not.

Amy *v.* Dubuque, 98 U. S. 473.

It has been said that interest is none the less interest because it is evidenced by a coupon.

In a sense this is true. But it is also true that clothing interest in the garb of a coupon does impart to it some attributes which it does not otherwise possess. Decided cases prove this.

In City *v.* Lamson, 9 Wall. 477, an action on coupons owned apart from the bonds, Nelson, J., adverts to one difference. At page 482 he says:—

"We agree that if this were an action upon the bonds to recover installments of interest that had accrued thereon, although such installments had been duly assigned to the plaintiff, there would be great difficulty in maintaining it in his name, as well as without producing the bonds, as the proper evidence that interest was due."

Again, it is held that interest not evidenced by a coupon does not bear interest in the absence of an express promise.

Stoner *v.* Evans, 38 Mo. 461.
Ferry *v.* Ferry, 2 Cush. 92;
Stokely *v.* Thomson, 34 Pa. St. 213.

But if evidenced by a coupon, it bears interest from maturity.

Aurora *v.* West, 7 Wall. 82, 105.

Again, so long as a bond is not barred by limitation, interest on it may be recovered with the bond, no matter how long past due the interest may be.

Bank *v.* Doe, 19 Vt. 463;
Ferry *v.* Ferry, 2 Cush. 92;
Henderson *v.* Hamilton, 1 Hall, 314.

But if the interest be evidenced by a coupon, that being a separate obligation is subject to the operation of the statute of limitations and will be barred if the statutory period has elapsed since it became due, though the bond itself is not barred.

Clark *v.* Iowa City, 20 Wall. 583.

Nor in such case can the holder in a suit on the bond, disregard the outlawed coupon and recover the interest as interest.

Griffin *v.* Macon County, 36 Fed. 885.

(*b*) For a generation before the act of 1887 was passed, suits on municipal bonds and coupons had been among the most familiar in the Federal courts.

But if it is true that coupons are only interest and must be excluded in determining the jurisdiction, then cases are no longer cognizable in these courts where the action is founded wholly on coupons, for they must all be excluded from the count.

The practical result of this will be that the great mass of what is termed bond litigation will be turned away from these courts. As the bonds usually have a long time to run, when default occurs holders cannot postpone suing until they mature. To save the coupons from the statute of limitations as well as for other reasons, they are generally obliged to sue upon the coupons long before the bonds come due. It is in these suits that the validity of the bonds themselves must generally be determined. If they can no longer be brought in the Federal courts, the change is a great one and the situation is a grave one for the holders of all municipal securities.

It is a matter of common knowledge that these securities have up to the present time been bought largely upon the faith of the fact that in the hands of non-residents they could be sued on in the United States courts, and much of their value is due to that fact. This privilege has always been regarded as an indispensable safeguard against local prejudice. If it is withdrawn, a heavy blow will have been struck alike at the holders of municipal securities now in existence and the ability of municipalities to obtain credit in the future. It is impossible to believe that Congress could have intended by the mere use of the words "exclusive of interest" to work a change of such consequence to the financial world.

(*c*) On the argument below defendant's counsel shrank from following their theory to this, its legitimate conclusion. No doubt they were unwilling to undertake the task

of persuading the courts, or at least this court, that Congress meant to hide so far-reaching a purpose under so innocent and indirect a phrase. Accordingly they limited their claim to the case where the action is brought on coupons in connection with the very bonds to which they belong. In this case, they said, the coupons are interest on the bonds in suit, and nothing more.

In the Howard case the learned judge of the district court was careful to say: —

"Nothing said or decided here has any reference to the right to supplement the principal amount of the bonds with coupons owned by the suitor representing interest on some other bond, in order to give jurisdiction to the Federal courts."

Howard *v.* Bates County, 43 Fed. 276.

We are unable to understand why, if they are interest in this case, they are not also interest, when the action is founded on coupons alone, or when it is founded on coupons in connection with bonds to which they do not belong. Whether they are interest or not must depend on their nature and attributes, and not on the fortuitous circumstance that they are or are not sued on in connection with the same bonds to which they were originally attached.

If they are interest, it must be because they represent interest and were issued in token of it. That this is the occasion of their existence is, of course, the fact; and it seems to us indisputable that the effect of that fact cannot be changed by the company the coupons are made to keep in the plaintiff's petition. In other words, whether they are associated with the bonds to which they belong or are dissociated from them, it is true that the original consideration for their issue is interest expected to accrue, and the

motive for their creation is facility of collection of this interest and of transfer; and on the other hand it is also true that they constitute independent claims, independent because separable from the bonds and capable of sustaining a separate action; and further it is true that in either connection they are themselves interest-bearing obligations.

If defendant's claim be correct, then A owning $2,000 of bonds with coupons attached cannot sue in the Federal court; but if he exchange a single coupon with B who is in like predicament, instantly both he and B become qualified and may proceed to sue. It is trifling with the subject to suppose that the act of Congress could lead to such results.

In conclusion we think the meaning of this statute is that the claim or the aggregate of the claims sued on must exceed $2,000, without adding the incidental interest accrued upon them; but we do not think it was intended to exclude any separate and distinct claim from the count because the consideration for its issue was interest.

2. Sixteen of these twenty-eight coupons were more than ten years overdue when this suit was brought. As to these it is objected by the defendant:—

1st. That they are barred by limitation and therefore cannot be counted.

2d. That the plaintiff had no hope of recovering on them, and only included them in his petition in order to make a show of a cause of action exceeding $2,000.

The first of these objections, though incorporated in what is called the plea in abatement, is manifestly a demurrer to the petition so far as it is founded on these sixteen coupons.

The second is raised in the plea by a direct averment, in

support of which, however, though it was denied by the plaintiff's reply, the defendant offered no evidence. She evidently relied upon the expected successful issue of her demurrer to prove her allegation of fact. This is believed to be a novelty in the law, but it succeeded in the court below.

Inasmuch as this case went off on a question of jurisdiction we insist that the first of the above objections is not and was not open to consideration. It involves what we think is a manifest contradiction, namely that the court shall hear and determine a material question touching the plaintiff's right of recovery in the case, and having passed on this shall then proceed to decide whether the court had jurisdiction. In other words, the court was asked first to assume jurisdiction for the purpose of eliminating sixteen of plaintiff's causes of action, and then to declare that there was no jurisdiction. The learned district judge saw no difficulty in the way of this, and the record shows he did it. We think the error is palpable.

(*a*) Let us assume, however, that the court below had a right to pass on the question whether these sixteen coupons were barred, and that it was correct in holding them barred, still we say that that was a matter which went, not to the jurisdiction of the court, but only to the amount of plaintiff's recovery.

The fact that there is a good defense apparent on the face of the plaintiff's pleadings to a part of the amount in controversy and that the rest is less than $2,000 does not oust a Federal Circuit Court of jurisdiction. "For who can say in advance that that defense will be presented by the defendant, or if presented sustained by the court?"

Schunck *v.* Moline &c. Co., 147 U. S. 500;
Martin *v.* Goode, 111 N. C. 288.

(*b*) But these sixteen coupons we insist are not barred. The record shows that within ten years (the statutory period) before the institution of this suit, the County Court of Bates County made and entered an order of record, which was signed by all the judges, in which they recited the facts relating to the issue, in the year 1871, of ninety bonds of $1,000 each, with coupons attached, and declared that the total amount of the indebtedness "now due and owing by said township" on this account was about $250,000, of which amount it was stated about $130,000, was then in suit or reduced to judgment and the rest was in the shape of unsued bonds and coupons. The fact was recited that a small portion of the coupons due in the years 1872 and 1873 had been paid. Aside from these no exception was made in the order. It in express terms included "the whole of the indebtedness so created by the issue of said ninety bonds together with all the interest due thereon."

The bonds and coupons described in the petition in this action are among those described in this order, as will be seen by a comparison of the petition and the order.

At the time this order was entered, July 10th, 1885, all the coupons of 1873, 1874 and 1875 were more than ten years past due, and were subject to the bar of the statute.

1 Rev. Stat. Mo. 1879, Sec. 3229.

Yet they are not excluded, as they should have been, if it had been intended to do so. The Funding Act, under which this order was made, expressly provided that such an order should state: "First, the amount, principal and accrued interest, of the outstanding bonds or subscription to the capital stock of any railroad company proposed to be funded, etc."

Rev. Stat. Mo. 1879, Sec. 4290.

This order is a distinct acknowledgment, as indebtedness of the township, of all the bonds and all the coupons except

those of 1872 and 1873, which had been paid, and the effect of it is to save all those then past due from the operation of the statute. A section of the statute then in force was as follows:—

"In actions founded on any contract, no *acknowledgment* or promise hereafter made shall be evidence of a new or continuing contract, whereby to take any case out of the operation of the provisions of this article, or deprive any party of the benefit thereof, unless such acknowledgment or promise be made or contained by or in some writing subscribed by the party chargeable thereby."

1 Rev. Stat. 1879, Sec. 3248.

Under this statute an acknowledgment of the debt is sufficient; no promise to pay is necessary.

Chidsey *v.* Powell, 91 Mo. 623;
Elliott *v.* Leake, 5 Mo. 208;
Bell *v.* Morrison, 1 Pet. 363;
Wetzell *v.* Bussard, 11 Wheat. 309.

There are cases which hold that if the acknowledgment is coupled with a proposition of compromise, it will not remove the bar of the statute. This rule will not apply to the present case.

As above shown the Funding Act of 1879, in terms required an exact statement of the existing indebtedness. No vague and indefinite acknowledgment was allowed, such as are found in all the cases which lay down the above rule. Moreover, it is expressly recited in the order that a part of the bonds and coupons had been reduced to judgment, and the rest are spoken of as being equally a debt. As the judgments are unquestionable, it seems to follow that the intention was to treat all as equally unquestionable. The fact that a different rate of compromise is offered for the

two classes of indebtedness does not militate against this view. The offer was evidently framed on the theory that those who had obtained judgments or even had put their bonds in suit had incurred expense in the way of counsel fees, etc., and for this reason must be accorded a higher rate than those who had incurred no such expense. That this was the reason of the discrimination and not any superiority of the judgments over the bonds as a confirmed and ascertained indebtedness is clear from the fact that bonds and coupons merely sued, but not reduced to judgment, were to be paid at as high a rate as the judgments themselves.

The point was made that this order was an offer of compromise, and for that reason no use could be made of it against the county.

It is true that an offer of compromise made pending a controversy is not admissible in evidence against the party making it. But this rule does not extend to any case where there is no controversy. It does not appear that in 1885 there was any controversy between the county and the holder of bonds 33 and 35 and their coupons. The Howard suit on them was not brought until 1889.

Smith *v.* Shell, 82 Mo. 215, 220.

(*c*) The learned district judge, speaking of these sixteen coupons, in his opinion said: "It must likewise be conceded that the judgment on the demurrer to plaintiff's prior action (No. 1666) as to the coupons barred by the statute of limitations is *res judicata* between the same parties." (Record, p. 38.)

This is not conceded. In the prior action a demurrer to the petition raised the question of plaintiff's right to recover on these coupons and also another question. As to the former the demurrer was sustained; as to the latter

it was overruled (Rec., p. 30). Defendant then filed an answer and subsequently plaintiff electing not to further prosecute the case, dismissed it (Rec., p. 33). There was no other judgment in the case.

The settled law is that a ruling on demurrer is conclusive only when it is followed by a final judgment which is decisive of the case.

Aurora *v.* West, 7 Wall. 82, 99;
Bissell *v.* Township, 124 U. S. 225;
Gould *v.* Evansville, 91 U. S. 526;
Connecticut Mut. L. Ins. Co. *v.* Smith, 117 Mo. 261, 296;
Bigelow on Estoppel (5 Ed.), 56;
Wells on Res Adjudicata, Secs. 446, *et seq.*

If it should now be claimed that the ruling of the court in the Howard case, that the coupons of 1880–1886 could not be counted when sued on in connection with the bonds, is *res judicata* as against this plaintiff, we should make the same answer.

II.

The seven funding bonds of $100 each may properly be counted in making up the jurisdictional amount.

As to these the defendant's claim is that they are admitted liabilities; that they would have been paid if they had been presented, and that plaintiff failed to present them and put them into this suit in order to make the amount of his claim more than $2,000 exclusive of interest and costs. These facts, it is supposed, constitute such a fraud upon the law that the court will have to eliminate these seven bonds, and having already eliminated the

twenty-eight coupons, the case will then stand as if there were nothing but the two $1,000 bonds in suit, and so no jurisdiction.

We insist that if the facts are as stated the result does not follow.

1. It is perfectly well-settled law that in an action upon liquidated demands, such as notes or bonds, the aggregate amount which the instruments sued on call for is the test of jurisdiction in the Circuit Court.

Lee *v.* Watson, 1 Wall. 338;
Wilson *v.* Daniel, 3 Dallas, 401, 407;
Barry *v.* Edmunds, 116 U. S. 550, 560;
Smith *v.* Clark Co., 54 Mo. 58.

The plaintiff may combine in one suit as many of these causes of action as he may have. No inquiry will be allowed as to his motive in so doing, so long as he does not sue on causes of action not his own. The fact that he may have been animated by a desire to get his case into the Federal court will not defeat the jurisdiction.

Cross *v.* Allen, 141 U. S. 528, 532;
Crawford *v.* Neal, 144 U. S. 585.

State courts recognize the right of a party to select his own forum, even to the extent of allowing him to remit part of his claim in order to sue in an inferior court.

Matlack *v.* Lare, 32 Mo. 262;
Works on Courts, p. 61.

Under these decisions a party having demands aggregating less than $2,000 may go into the market and buy up other demands against the same debtor for the express pur-

pose of giving jurisdiction to a Federal court, and his act will be perfectly legitimate. This must follow from any rational interpretation of the provisions of the constitution and laws of the United States conferring upon non-residents the right to sue in the Federal courts. These fix limitations as to the amount necessary to confer jurisdiction. It surely cannot be said that a non-resident must just happen to hold the necessary amount in order to warrant a Federal court in entertaining his suit. Since the right is conferred in order to assure him against the effects of local prejudice, he may of course, if he chooses, avail himself of that right, and if necessary may acquire additional causes of action in order to do so. Whether Mr. Edwards acquired these funding bonds for the express purpose of putting them into this suit, or when or for what purpose he obtained them does not appear by the record. But if it had been proven that he put them into this suit for the express purpose of conferring jurisdiction on the Circuit Court, the foregoing authorities abundantly show that this would only have been the exercise of a lawful right.

2. Nor is it material that defendant had set a time and place when and where the funding bonds would have been paid if demand had been made, but plaintiff failed to make demand and instead sued on them.

A Missouri statute provides that:—

"It shall not hereafter be available to a party as an objection that no demand for the subject-matter of a suit was made prior to its institution, unless it is expressly set up by way of defense in the answer or replication, and is also accompanied with a tender of the amount that is due; in which case, if the plaintiff will further prosecute his suit,

and shall not recover a greater sum than is tendered, he shall pay all costs."

1 Rev. Stat. Mo., 1889, Section 2948.

Under this statute, if a creditor sues without making demand, the only advantage the debtor can take is to set up the fact in his answer, make a tender and claim immunity from costs. If Bates County had pursued this course, then upon plaintiff's failure to recover on the other bonds and coupons the county would have escaped payment of costs. To this extent and to this extent only, can plaintiff's failure to demand payment prejudice his right of recovery.

Since the statute thus secures to the creditor the right, if he chooses, to sue upon even an acknowledged indebtedness without first making demand, subject only to the risk of paying costs, his conduct in so doing certainly cannot be made a reason why any court should refuse jurisdiction of his claim. If Edwards had owned, say $2,100 of these funding bonds, he could undoubtedly have sued on them in the proper State court; and if so, then, as he is a citizen of New York, why not in the United States court for the Western District of Missouri? The fact that the county admitted their validity and was ready to pay them, would have been no reason why the court should refuse to entertain jurisdiction of the case. Under the statute quoted, the defendant, by pleading the facts *and tendering the money* (which was not done) could have thrown the costs of the case upon him. This is the only penalty our law visits upon a party who brings an unnecessary suit. A Federal court sitting in Missouri should enforce this law, and should not go beyond it. To say that there was no matter in dispute between the parties when the local law recognizes any claim as disputed until it is paid, would be to create an unnecessary conflict of State and Federal jurisprudence.

Again, if there were no limit to the jurisdiction, under this statute plaintiff could undoubtedly sue in this court on these $700 of funding bonds alone, notwithstanding his failure to make demand. There being a limit, what is to prevent the plaintiff from adding his two $1,000 bonds in order to bring the case within the jurisdiction?

3. But independent of this statute, the rule must be the same. The matter in dispute is "the claim presented on the record to the legal consideration of the court. * * * What the plaintiff thus claims is the matter in dispute, though the claim may be incapable of proof or only in part well founded."

Kanouse *v.* Martin, 15 How. 207.

This is equally the matter in dispute, though the claim be so well founded that the debtor does not venture to contest it in court.

Fuller *v.* Ins. Co., 37 Fed. 163.

In several cases the test applied to determine what is the matter in dispute is "the amount for which there can be a recovery."

Schacker *v.* Ins. Co., 93 U. S. 241;
Gray *v.* Blanchard, 97 U. S. 564.

Tried by this test the plea is clearly bad. The substance of it is this: I deny liability for some of the causes of action sued on. I admit liability for the others. Deduct these latter from the sum total, and you have the "matter in dispute," and this does not exceed $2,000. Therefore the court has no jurisdiction.

In other words, defendant proposes by admitting liability

on part of her obligations to oust the jurisdiction of the court as to the rest. Her claim is that the admission takes that part out of the category of "the matter in dispute." Such a definition of that phrase is clearly unreasonable. It would always put it in the power of a defendant to determine whether the court should or should not have jurisdiction of a case. By denying the plaintiff's right of recovery he would affirm the jurisdiction: by admitting it, he would defeat the jurisdiction, and of course avoid a judgment. This would be a contradiction in terms and a juggling with justice.

Fuller *v.* Ins. Co., 37 Fed. 163.

Moreover, it might, and often would, be used as a mere device to baffle creditors. By admitting liability for the whole or a part of plaintiff's demand, the defendant might procure the dismissal of a suit, and then withdraw himself beyond the limits of the State, or dispose of his assets before a new action could be commenced in the State court.

Again, the court has no power to bind the defendant to an admission of liability except by entering a judgment against him. In the case at bar, notwithstanding the county's present profession of willingness to pay the funding bonds and Treasurer Hirni's statement that they would have been paid before now if they had been presented, they are in fact not paid, nor has tender of payment been made; and if the plaintiff is turned out of court, *non constat* but she may refuse payment when they shall be presented. Courts are not organized to subject litigants to the hazard of such trifling.

In this particular the case at bar differs radically from Tintsman *v.* Nat'l Bank, 100 U. S. 6, and other cases like it. In Tintsman's case, the defendant below by his answer admitted liability for part of plaintiff's demand, and the Supreme Court held that the amount thus admitted was not

part of the "matter in dispute" upon the writ of error. But in that case judgment had been entered against the defendant upon his admission. He had not asked, as this defendant does, that the action be dismissed because of his admission.

III.

The two $1,000 bonds are unquestionably to be counted.

The learned district judge, in his opinion, took occasion to say of plaintiff's bonds 33 and 35, that "his possession of those bonds, *if he holds them*, excites grave suspicion under all the facts and circumstances before the court" and that "they are *probably* the property of some other person" (Rec., pp. 39, 40).

These remarks are wholly uncalled for, since no issue was made as to plaintiff's ownership of these bonds, and no evidence was given on either side. The only semblance of an issue on this subject is found in the closing paragraph of the plea which does say that Howard and the plaintiff "by combining with the bonds and coupons owned by the said Howard," coupons which are barred by limitation and the funding bonds not yet matured, are attempting to bring within the jurisdiction of the court a matter of controversy which does not exceed $2,000 exclusive of interest.

This can hardly be understood as a charge that plaintiff did not own bonds 33 and 35; there is no denial of the express averment of the petition that plaintiff is the owner. That neither plaintiff nor defendant understood it in that light is plain from the fact that neither offered any evidence on the question. For the plaintiff's purposes, it is enough for him to offer evidence in chief as to ownership when he comes to try the case on the merits. If

defendant meant to question the jurisdiction on the ground that Howard was the owner of any of the bonds and coupons, it devolved upon her to offer some proof. The papers in the Howard case were offered. But they were no evidence on this point. They showed that on the 13th of November, 1889, Howard sued on these bonds 33 and 35, together with the coupons of 1880–1886 (14 coupons) attached to them; that on the 3d of March, 1890, defendant filed a demurrer to the jurisdiction; that on the 1st of September, 1890, this demurrer was sustained and on the 2d of March, 1891, Howard dismissed his suit.

The present suit was begun by Edwards on the 5th of October, 1891.

As these bonds are payable to bearer, if Howard's case had come to trial and they had been produced in evidence they would have made a *prima facie* case in favor of Howard's ownership at that time. That is the most that can be said. But as that case never came to trial no such *prima facie* case was ever made. Moreover, so far as these papers show, Howard ceased to assert ownership seven months before the present suit was brought. How then can it be said that the mere production of these papers has any tendency to prove that the bonds are now the property of Howard and not of the plaintiff? If the pendency of a suit proves anything the fact that the present action has been instituted is as good proof in favor of Edwards' present ownership as was the pendency of the former action in favor of Howard's ownership in 1889. As the two are not inconsistent, it would seem that the learned district judge has no ground for his suspicion. It would be a perfectly natural inference to suppose that Howard, discouraged by his defeat on the demurrer to the jurisdiction, sold his bonds. But this is a matter of conjecture only.

The defendant having attacked the jurisdiction of the court on the ground that the bonds are Howard's and not

plaintiff's (if that was intended by the plea) the affirmative of this issue is with her and the burden of proof of course rests on her; and as she has offered no evidence, plaintiff has offered none. The amount claimed being sufficient on its face, the court will retain jurisdiction until something appears to show that it ought not to.

Hilton *v.* Dickinson, 108 U. S. 174;
Barry *v.* Edmunds, 116 U. S. 561.

To recapitulate, we insist that in ascertaining the amount in dispute the plaintiff has a right to have all his causes of action counted, namely :—

1st. The two bonds of $1,000 each.
2d. The twenty-eight coupons of $100 each.
3d. The seven funding bonds of $100 each.

These aggregate $5,500, and confer jurisdiction.

Respectfully submitted,

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